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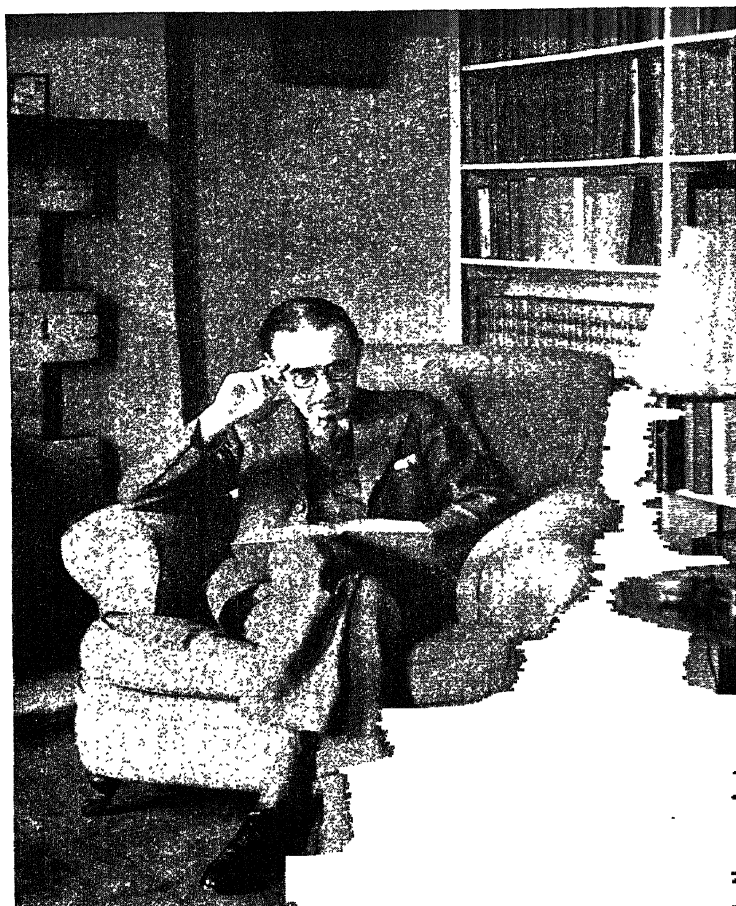
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Holmes-Laski Letters

THE CORRESPONDENCE OF
MR. JUSTICE HOLMES AND HAROLD J. LASKI

II

1926-1935



HAROLD J. LASKI

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Holmes-Laski Letters

THE CORRESPONDENCE OF
MR. JUSTICE HOLMES AND HAROLD J. LASKI
1916-1935

EDITED BY
Mark DeWolfe Howe
With a FOREWORD by
Felix Frankfurter



II

HARVARD UNIVERSITY PRESS

CAMBRIDGE • MASSACHUSETTS

1953

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Printed in the United States of America

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FRONTISPIECE

From a photograph of the original painting by Charles Hopkinson in 1929. Reproduced through the courtesy of the Harvard Law School.

LASKI'S LETTER OF FEBRUARY 18, 1920

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VOLUME II

HAROLD J. LASKI

FRONTISPIECE

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A PORTION OF HOLMES'S LETTER OF MAY 12, 1930 1246

V

1926-1927

Washington, D. C., January 3, 1926

Dear Laski: A happy New Year to you. It is delightful to think that you will be here. I agree with you that it would not be best for us to attempt to put you up. Among other reasons, you would have to climb so many stairs, but you will share our victuals at convenient moments and we will talk. And you shall have one more chance to see light on sovereignty. In actual fact I wouldn't think it possible for us to disagree had you not said that you thought *Kawananakoa v. Polyblank*¹ wrong. That chap Zane said that no one who thought it right could hope to be a lawyer,² while I categorically and brutally think that one who doesn't think it right (I mean in the general aspects) simply doesn't understand what he is talking about.

Your friend Smellie called yesterday and took luncheon here today. I enjoyed seeing him very much and learned only by accident that he was a "thin red 'ero" and had lost both feet in the war. Another man, Gates,³ was here just before, from Frankfurter, whom also I liked greatly. But I have spasms of shame after I have seen these fellows to think of having repeated all my old chestnuts to them. Yet if we worried about repeating ourselves who should escape?

I didn't know Vinogradoff was dead. I don't think him a great loss to the world of thought, judging by what I have read of his writing, but I agree that his *Villainage in England* was a good book. He was the first to print what I had noticed, the reappearance of the *festuca* etc.⁴ in the manorial ceremonies.

I should have liked to hear Pollack on the need for a philosophy of law. You speak of him as a man of 75, or, qu. Ms? 78. He has just celebrated his 80th birthday and I have congratulated him as an infant just appearing through the trap door in the upper story of the old.

I haven't had time to read Warren's volume 4 about our Court.⁵ The other three I thought as good as could be from anyone except a very superior and penetrating intellect which I hardly think Warren has. I should call them first rate.

I read Whitehead's *Science and the Modern World*. It seemed to me obscurely written, perhaps not so to mathematicians and it did not change my view of the universe. He's a clever man, but I doubt if he wields a thunderbolt. . . .

¹ *Supra*, p. 776.

² *Supra*, p. 180, note 3.

³ Sylvester Gates, an Oxford graduate, was currently a special student at the Harvard Law School.

⁴ Vinogradoff had noted the similarity between the rituals of *enfeoffment* in manorial courts with those observed in Frankish law. *Villainage in England* 372 *et seq.*

⁵ Charles Warren's *Congress, the Constitution, and the Supreme Court* (1925) was not a fourth volume of his *Supreme Court in United States History* (3 vols., 1922).

Smollett I haven't read since you were born. I thought him rather dull I believe in former days.

Tomorrow morning we take a dry dive into a longish sitting, with its concomitant prepossessions. On looking at the schedule I see that we sit during the first three weeks of March. March 22 begins a 3 weeks recess, which I hope will be propitious for your visit. I can almost say *à bientôt*.

Yours ever, O. W. H.

16 Warwick Gardens, 9.I.26

My dear Justice: Two delightful letters from you were waiting for me on our return from the Continent. We had a wonderful ten days there, mainly spent in looking at pictures and bookshops. I went to Amsterdam and saw some Vermeers which confirmed my general impression that the Dutch Flemish school is much more attractive than the Italian. I spent a day in the Plantin Museum, handling letters from people like Scaliger arranging for the printing of their books. And I found some pretty treasures of which the most interesting was the ms diary of an Antwerp merchant who came to England in 1632. He notes down all he bought here, and being evidently interested in literature some of the songs he heard in the street. Being a good husband he also takes down recipes for his wife of things like English puddings and notes, thus early, that the English do not know how to cook vegetables. I bought, too, a nice copy of the first edition of Descartes and an engraving of Voltaire by Moreau Le Jeune¹ which explains almost everything in the extraordinary man merely in the mouth and the sinuous twist of the nose. I like the Flemish country and if only one could, say, destroy about ⅔ of the Roman Church's influence there, one feels that one would get a flowering civilisation. While I was there I read two books which I do most warmly commend to you: (1) *The Mentality of Apes* by Köhler, which is simply thrilling, as attractive a book as I have read in many a long day and (2) *Folk-lore in the Old Testament* by J. G. Frazer — an abridged edition in one volume which I found full of interest. I met one Dutch lawyer of some eminence who seemed to know you and Pound and went up in my esteem until he added "that great figure, J. M. Beck." Then back here to get lectures ready and have some pleasant dinners and visit my favourite book-haunts and the National Gallery to see more Vermeers and find out what reproductions were good and purchasable. We dined the other night with Wallas and fought over some old but attractive fights anent the value of modern psychology in politics. Also a good dinner with Sankey, J. whom I like the more I see of him. He told me one delightful story of a man he tried

¹ Jean Michel Moreau (1714-1814), illustrator of Rousseau's works and brother of the painter Louis Gabriel Moreau.

at Leicester last year who, before sentence was passed, explained to him that he was the only honest plumber in Leicester. The charge was one of coining and Sankey said that there was some disparity between claim and charge; "Oh," said the prisoner, "of course I keeps my 'abits separate." Did I tell you of hearing F. Pollock open a discussion on philosophy and law at which he was really admirable? I must add, by way of anecdote, one sheer delight. Maurice Amos and I dined the other night with Haldane and the latter was recounting with a somewhat serene air the things that had made him contented with life. He had read philosophy; he had met the best minds of his generation; he had helped in some big events; and he had never passed an important dish at a public dinner. I wish I could picture to you the smile of happy benevolence on Haldane's tubby face as this grand climax came out. Amos said he felt that he ought to recite the *nunc dimittis*. Since I came back I have done but little beyond these things; but a bookshop adventure may interest you. I am talking to its owner, a man of about fifty. Suddenly a white-haired old fellow certainly around eighty approaches him. "Are you Mr. Bailey?" "Yes." "Mr. Angus Bailey?" "Yes?" "Don't you know me?" "No." (a little doubtfully). "I'm your Uncle Ezra who went to Australia fifty-eight years ago; and if your father's still alive I'm not coming into the shop." Luckily the father was dead and so the old man did come in. But the nephew later told me the history. The two brothers were members of the same Baptist chapel and quarrelled violently (about 1865) about anti-paedobaptism. They dissolved partnership and one went to Australia. They never spoke or wrote to each other in the interval. Their sons and daughters met, and the English nephew's son was actually married to the granddaughter of the old Australian gentleman. I had a chat with him — utterly bewildered by London, amazed and chagrined to find that Darwin (whom he regarded as a blasphemer) was buried in Westminster Abbey. The greatest man in 19th century England was Spurgeon, Australia was morally a bad country; the Presbyterians and Romans have it in their grip. He wasn't keen to stay in England. He had heard that in Iowa the Baptists were very powerful and he thought he would go out there and start a religious bookshop. He was a game old boy who asked me what I was and when I told him at once said with fierce simplicity "Another of them mucky Atheists?" He regarded research into natural science as sin. Poverty was one's own fault and Herbert Spencer (just dawning when he left England) ought to have been living. He was as young in spirit as when he left England and he fought at the crack of the pistol. Once I said that things change — "Yes, young man, but God's truths don't change." I left him walking back to his lodgings like an old Covenanter — a magnificent spectacle.

My love to you both.

Ever affectionately yours, H. J. L.

16 Warwick Gardens, 17.1.26

My dear Justice: I came back yesterday from a week in Scotland to find your adorable letter. I envy you the patience that works through Whitehead's book. I began it at the behest of Bertrand Russell, but found it too far from me in mental point of view to get much headway. Russell says that we have not yet reached the point where we can distinguish between facts about relativity and mathematical operations which may have nothing to do therewith; I bought a couple of books for the train to Edinburgh, but I can't say I was greatly illuminated. But two books I have read with great pleasure, both by the same man. One is a *History of Political Science since Plato* (R. H. Murray) and the other the *Political Consequences of the Reformation*. They are both what I should call informing books, written from a full mind and a large heart, and the second, especially, has the great merit of making things clear that otherwise seem entangled and complex. Also he is a devout Austinian who accepts as obvious the conclusions of Holmes, J. in the *Polyblank* case, so he will give you especial comfort, even though, thereby, he reveals to me the one channel of weakness in his mind. And I have been reading for the first time Burton's *Anatomy of Melancholy* and really liking it as an ideal book for bed-purposes. Queer and distorted that world is, but there is an ability pun-
 gently to reflect which is impressive. Also Vauvenargues, whom I find delightful and I pray you to procure a volume of his *Maximes*, preferably without editorial embellishments, and ask yourself if he was not the wisest man since Bacon. I admire endlessly that French gift of packing a lifetime's experience into a phrase; and he certainly had it in full measure. Also he is one up to Voltaire; for when the young and unknown army captain sent a sheaf of mss to the great man he struck the table with his fist and proclaimed genius on the spot. I mentioned this to Birrell who at once retorted that it is dangerous; he had done it once and the man next year got penal servitude for embezzling from his female admirers. Whence, said Birrell, I have been led to demand proofs of a sober life, preferably married, before I eulogise unduly in the public press.

I had pleasant days in Scotland — nice audiences to lecture to, and a pleasant series of academic dinners. But the people of interest were not in my own subjects. The best of them by far was a young Darwin¹ (about my own age or a little more), the son of Sir George. The moral philosophers, especially at Glasgow, were unco' guid, with a real theological flavour; and it was evident that the Rhine had overflowed the Firth of Forth for they were all devout Hegelians, and looked on the Cairds and

¹ Sir Charles Galton Darwin (1887–); Tait Professor of Natural Philosophy, Edinburgh University, 1923–1936; Master of Christ's College, Cambridge, 1936–1938; author of works on theoretical physics.

Bosanquet as demigods. When I doubted whether vitalism was anything but an expression of the degree to which physiology and bio-chemistry have still to progress, I was treated as a hare-brained extremist for whom respect is impossible. I met one old judge (Salvesen)² who just remembered Francis Jeffrey³ and Cockburn, and was told by the former that Brougham once wrote in a day (I) three decisions for the Privy Council, (II) an article for the *Edinburgh Review*, and (III) most of a draft report for a Royal Commission. Jeffrey told this to Macaulay who said remarkable indeed; but still more so in that (I) the decisions were wrong, (II) the article was absurd, and (III) he (Macaulay) got the Royal Commission to reject the draft report. I was amused to find that a good deal of the supposed Scottish knowledge of Roman law is mythical, insofar as complete ignorance of any book except the text on the lawyers' part is evidence of that. At least I mentioned people like Girard in vain; and I found the Regius professor of the Civil Law bewailing the fact that students found the subject too little related to their job.

I lunched yesterday at his kind suggestion with Lewis Einstein and found him entirely delightful. He gave me a good report of you, and I forgot time in the energy of discussion. He reminded me much of a balanced and more cultured Arthur Hill; and I was charmed by the interest he retained in what ought to have been his life-work. And today I lunched with Sankey as a farewell before he set out for assize. He had an old law lord with him, Wrenbury who was once Buckley, L.J.⁴ The old gentleman told good stories of the bar in ancient days, but was over-anxious, I thought, about the steepness of taxation. And as he thought Malthus a "nasty old man" and "his disciples worse," I, as a good Malthusian was perhaps more energetic in rebuttal than the old gentleman liked. But *ad finem* he seemed placated for he said he would read Malthus, the which he had never done. Of such is the Kingdom of heaven for Wrenbury is a great figure in the Church. I also met a Bishop there who deplored the decay in the missionary effort among the Jews and asked my views. "I, my lord," I said, "am the corpse rather than the surgeon and I cannot be expected to subscribe to the cost of the operation." But

² Edward Theodore Salvesen (1857-1942), Lord of Session, 1905-1922, member of the Judicial Committee of the Privy Council, 1922-1939.

³ Francis Jeffrey (1773-1850), Lord Jeffrey, Scottish judge and critic who was one of the founders of the *Edinburgh Review* and was Judge of the Court of Session from 1834 to 1850 and as such had decided in favor of the "wee frees" in the Case of the Free Church of Scotland; see, *supra*, p. 20. It should be noted, perhaps, that both Lord Jeffrey and Lord Cockburn (1779-1854) died before Lord Salvesen's birth.

⁴ Henry Burton Buckley (1845-1935), Lord Wrenbury; judge of the Chancery Division, 1900-1906; Court of Appeal, 1906-1915. After retirement he continued active in hearing appeals to the House of Lords and the Judicial Committee of the Privy Council.

he felt that if only there were special church services in Hebrew the gulf between the Church and the synagogue could be bridged. I do hope you realise fully that these men also are God's creatures.

You notice that I have changed the format of these letters,⁵ in the belief that it may give you aid and comfort in reading them. I'm glad my general American plan fits your views. I begin to get really excited about it, even to the point of anger when cynical friends say that the State Department will not give me a *visé*. But I shall be in America on March 27 if I have to swim over.

My love warmly to you both, *Ever affectionately yours, H. J. L.*

Washington, D. C., January 29, 1926

Dear Laski: Two letters from you, delightful as usual, this week. The last this morning, I could not answer at the drop of the hat because I was so busy with the work here. But a recess comes on Monday, and all my opinions are written, up to date. Do you know I really am bothered by the old difference between us, if there is one, as to sovereignty, because as I understand the question it seems to me one that does not admit of argument. The thing to which I refer has nothing to do with the difficulty of finding out who the sovereign is, or the tacitly recognized *de facto* limits on the power of the most absolute sovereign that ever was. The issue is on this decision that you criticize, and even narrower than that. If you should say that the Courts ought in these days to assume a consent of the U.S. to be sued, or to be liable in tort on the same principle as those governing private persons, I should have my reason for thinking you wrong, but should not care, as that would be an intelligible point of difference. But what I can't understand is the suggestion that the United States is bound by law even though it does not assent. What I mean by law in this connection is that which is or should be enforced by the Courts and I can't understand how anyone should think that an instrumentality established by the United States to carry out its will, and that it can depose upon a failure to do so, should undertake to enforce something that *ex hypothesi* is against its will. It seems to me like shaking one's fist at the sky, when the sky furnishes the energy that enables one to raise the fist. There is a tendency to think of judges as if they were independent mouthpieces of the infinite, and not simply directors of a force that comes from the source that gives them their authority. I think our court has fallen into the error at times and it is that that I have aimed at when I have said that the Common Law is not a brooding omnipresence in the sky and that the U.S. is not subject to some mystic overlaw that

⁵In this letter and the two succeeding letters Laski widened the space between the lines.

it is bound to obey. When our U.S. Circuit Courts are backed up by us in saying that suitors have a right to their independent judgment as to the common law of a State, and so that the U.S. Courts may disregard the decisions of the Supreme Court of the State, the fallacy is illustrated. The Common Law in a State is the Common Law of that state deriving all its authority from the State, as is shown by Louisiana where it does not prevail. But the late Harlan, Day, and a majority of others have treated the question as if they were invited to speculate about *the* Common Law *in abstracto*. I repeat that if you merely mean that we ought to imply a consent until it is denied in terms, I should think you were wrong and that I was better fitted to judge of that than outsiders, but that would be a specific question for a given situation, a difference about which could create no concern.

Wednesday I had to preside *vice* the C.J. absent at a funeral and again today as he had caught a cold and was advised to keep to the house. The newspapers laid hold of it for a paragraph, and even one chap got a photograph in the literal five minutes that I gave him. It came out in the evening paper — good but looking very old. It made me realize what a hungry lot the reporters are — every trifle that will make a paragraph is, I suppose, cash to them. The other day there was a railroad accident here and they were ferocious with the doctors and the nurses in a hospital who wouldn't let them interview the damaged engineer although they were told that it was a matter of life and death to keep him undisturbed. Queer, the way in which Beck has made an impression in Europe. I am rather sorry for him. He avows disappointed ambitions, I believe. A kindly man, but of an incredible egotism. I am not sure whether he has a *naïf* belief in his own misfortunes, as some think, or asserts it to keep up his courage. He is clever, too, if he would only master something. Your account of the old Scotch quasi Covenanter was fine, also your anecdote of Haldane, also what you say of Burton and Vauvenargue's *Maximes*. . . . I rejoice that you and Einstein took to each other. And I am much pleased by your discerning touch as to what "ought to have been his life work."

Your suggestion of possible trouble about coming here worries me a little. They have made troubles that seemed queer, but I have assumed (in perfect ignorance) that the exclusions came from some hint on the part of a government. If I were you I would make sure beforehand that there will be no trouble. I was remarking to Brandeis the other day that speech was freer in England than here, now, whereas in 1866 or 7 it was freer here and he mentioned some writer who had made this same observation. I noted it as the striking of a bell when under Morley's editorship the Pall Mall spoke in a matter of course way of those who did not believe in Christianity. Much later I noted the complete change since my first visit

when a lady whom I took down to dinner, having just been introduced to her asked me if I believed in it, and she turned out to be a Catholic. On the other hand when my friend Henry Cowper¹ was here in '67 he said I notice that you *say* you don't believe.

Let me return for a moment to the matter of actions of tort. I hesitate as to what government should do because among other things I think the action has been a doubtful good in these days. Lawyers are on the lookout to trump up claims, which they prosecute on shares. I suspect that the substitution of a regulated insurance is a great improvement so far as it goes. With the government as it is here the trouble would be greater even than it is with the railroads. Of course the abstract proposition of justice is plain. On the general theme you must remember that I criticized Austin and dwelt on the independent sources of actual authority, before you were born, and that therefore it is no novelty to me. (The approach of 85 makes me pose as an old man. Pray for me.)

Affectionately yours, O. W. Holmes

The President is getting to be recognized as a man of wit. I have heard several things of his saying that prove it. Long ago his remark that diplomas were not wolves in sheeps clothing looked that way. Stone, a good man, told me how he wished he had made a note of some of his saying that he heard when Attorney General.

16 Warwick Gardens, 23.I.26

My dear Justice: My travels, at last, are over. I gave a lecture on "Freedom of Discussion" at the University of Wales last Tuesday and now I can enjoy seven weeks' peaceful routine. The discussion on the lecture was very amusing. Wales, as you perhaps know, is full of nonconformist sects, each convinced that it has a private recipe for salvation. My cue was to supply a kind of historic background for the dissent in the *Abrams* case; all the secular people warmly sympathised; all the religious thought it damnable and detestable that untrue doctrine should be permitted. I met a variety of eccentricities, including a professor of mathematics who has devoted forty years of enthusiasm to the discovery of the highest possible prime number. I mentioned a retired major (an F.R.S.) in London who has the same passion and was at once met with a stream of vitriolic abuse which was delivered with amazing energy. I suppose accordingly that nothing leads to such really deep feelings as the pursuit of the definitively useless. I also have been to see the memorial exhibition of Sargent — an amazing show. It's quite clear when you see the things *en masse* that his methods were French — Manet comes to my mind. But I think there is a lot of trickery in them; the paint is so put on that

¹ See, *supra*, p. 323.

there is little or no inner coherence in them. I take it that a picture ought to be a complete whole; it seems to me that his are rather a catalogue, brilliant, insolent, but without emotion or inwardness and with little delicacy of perception. I hope I do not insult one of your idols; broadly I felt impressed but disappointed.

Also I have been reading Ambassador Page's letters.¹ He produces on me the same kind of impression that Lowell does, a competent man of the world, not very profound, too often taking *ignotum pro magnifico* for his standard of judgment, a little prone to believe idle gossip, a tiny bit of a snob, and self-conscious of it, yet on the whole a thoroughly good fellow who cared deeply about America without having any great grasp of what it meant. . . . And I read the volume by Channing on the Civil War, mainly with the sense that he had been over-indulgent to the South. And I went to a brilliant lecture by a Frenchman, Pierre Hamp,² who put the case for Pragmatism in exquisite French, and said some clever things of which the thing I liked best was the remark that Idealism represents the willingness of theology to insist that God is an abstraction in case his personality is found out. He mentioned one or two living people, especially one Meyerson, as of great importance and altogether radiated such charm that it was a delight to listen to him. I have seen, too, a collection of fifty unpublished letters of Descartes to Huygens³ on Cartesianism which thrilled me. The great man straining to make a convert of one almost as great is really rather an attractive spectacle. And, even more interesting, I think, one of our students had discovered an unpublished ms treatise of Bentham which is a sequel to the *Fragment on Government* and dissects the rest of Blackstone in similar style.⁴ It was a great chase, for parts of it were in one library, parts in a second, parts in a third. They all had to be pieced together, and it was only by careful insight that they could be arranged. If this had been a classical writer of bastard Latin in the late silver age, I suppose there would have been a great fuss about it; as it is, we had great difficulty in finding a publisher willing to do a critical edition. It really is a remarkable book, written before Bentham's style decided to anticipate the worst involutions of Henry James. The young fellow who found it, by the way, is an American from Columbia.

My love to you both.

Ever affectionately yours, H. J. L.

¹ Burton J. Hendrick, *The Life and Letters of Walter H. Page* (3 vols., 1925).

² Pierre Hamp, pseudonym of Pierre Bourillon (1876-), chef by inheritance and training who became a distinguished novelist and sociologist, author of a series of works under the general title, *La peine des hommes*.

³ See *Correspondence of Descartes and Constantyn Huygens, 1635-1647* (Roth, ed., 1926).

⁴ Published as *A Comment on the Commentaries* (C. W. Everett, ed., 1928); reviewed by Laski, 18 *Manchester Guardian Weekly* 453 (June 8, 1928).

16 Warwick Gardens, 6.II.26

My dear Justice: A fortnight of rather hard work. First of all two public lectures, one of which, on Rousseau, I really enjoyed giving; and it led to an amusing onslaught on me by a clergyman who felt strongly that a man as bad in character as Rousseau could not possibly have written a great book. The other was in a series we are giving at the School on Adam Smith to celebrate the passage of 150 years since the *Wealth of Nations* was published. I lectured on him as a great political thinker and had a jolly time working out the contradiction between the theory he urges and the range of exceptions he admits. It is really interesting to see in Smith the meeting between typical *a priori* natural law and the historical method he had learned from Montesquieu. They don't fuse completely, and the result is a certain confusion. But the fairness of mind is remarkable, e.g. the detachment from the War of Independence with the plea for federal union and the possibility of a new Constantinople as the American capital of the British Empire. And re-reading Rae's *Life of Smith* I found it impossible not to love both the old fellow and David Hume. They have an equanimity of mind which is very enviable.

Of reading I have been mainly plunged into the matter of lectures. But one or two things arising therefrom deserve mention. Have you ever read P. M. Masson's *Religion de Jean Jacques*? — much the best book on Rousseau, I think, ever written? Second, did you ever know the work of the economist Cliffe Leslie? I came to him from his essay on Adam Smith¹ and found him full of good things, often, indeed, remarkable things. And I read an admirable book of J. A. Hobson's called *Free Thought in the Social Sciences*² which would, I think, interest you greatly. It is a study of the obstacles to disinterestedness in thinking connected with human material and, in especial, its account of the use of scientific method in political economy as the tool of preconceived desire is, I think, beautifully done, especially as it becomes fatal both to Marshall and to Marx. One other book I have thought well of, though in a lighter way, is the *Mémoires* of the French encyclopedist, Marmontel. He gives one especially a quite remarkable picture of the early days before and after the sitting of the States-General. It bears the impress of truth, especially his interview with the academician, Chamfort,³ whose ideas explain much of the course taken by revolutions. And it amused me to

¹The essay of Thomas Edward Cliffe Leslie (1827–1882), "The Political Economy of Adam Smith," is in his *Essays in Political and Moral Philosophy* (1879).

²Reviewed by Laski, 14 *Manchester Guardian Weekly* 154 (Feb. 19, 1926).

³Sébastien Chamfort (1740–1794), French epigrammatist and man of letters, enthusiastically espoused the cause of revolution, but could not stomach the Reign of Terror and met his end by suicide.

find there most of the theory of social psychology which Graham Wallas *et hoc genus omne* set out in formidable tomes. Marmontel is, of course not one of the big people, and he absurdly overrates his own importance; and he quotes enthusiastic letters from Voltaire to him while in the Correspondence of Voltaire you find the latter saying to Diderot "*Ce M. fera rien, il n'a pas le secret.*" And, finally, I have been struggling with Kuno Fischer's *History of German [sic] Philosophy*⁴ which will, I expect, later repay effort but at present is largely bewilderment and pain.

I must not omit the story I heard the other day of Bradley the metaphysician. Brodrick, the head of Merton,⁵ was a notorious talker to whom a two-hour monologue was a normal incident. One day he came into the common room with a broken arm. "How did he do it?" Bradley was asked. "Trying to hold his tongue" was the retort.

Of other things. A jolly lunch with the Swedish minister at which, *inter alios*, Alfred Noyes, the poet, and Baldwin were present. The former, I thought, a self-conscious fool. He acted the poet. "There are moments when I feel uplifted . . . perhaps three of my things will live . . . one is conscious of persons as colours. KTA"; but it was good to see the professional aesthete in action. Baldwin as always was simple and interesting — particularly so on Lloyd-George. "It would be easy," he said, "to deal with him if he merely thought he was Napoleon, but he insists that he is the Twelve Apostles." He thought Asquith easily the finest speaker he had heard in the House, but Bonar Law much the most successful in holding it. He said the House in his experience is always kind to error and always ruthless to cleverness. He told us that on the average five hundred people in a year ask directly for knighthoods and peerages, and he had one delightful letter from a business gentleman beginning, "Appreciating as you must do my services to the Empire." I like his simplicity enormously. He doesn't set up to be a great man; and to a lady who made a remark implying that he was he said "Madam, I know myself in my bath to be as naked as most. . . ."

I am very grateful for your kindness to my young colleague Smellie; he writes most happily of his visit to you. I have now booked my passage and *paid for it* on the *Berengaria* on the 20th of March. I shall, I think, go direct to Boston and spend ten days there; then on to Washington; and a few days in New York before I sail again. I need not say that the mere thought of talk once more gives me joy.

My love warmly to you both,

Ever affectionately yours, H. J. L.

⁴ Kuno Fischer, *History of Modern Philosophy* (Gordy, tr., 1887).

⁵ George Charles Brodrick (1831–1903); his career as lawyer, journalist, and liberal politician was followed by more than twenty years as Warden of Merton College and amateur historian.

Washington, D. C., February 7, 1926

My dear Laski: This is after having been shut up for a week with a cold — the grasshopper is a burden — but luckily all my work is done. Following your suggestion I telephoned the Congressional Library for Vauvenargues, and, on my own motion, for Benjamin Constant's *Adolphe*. By and by I received an English novel with a name (I forget it) dimly approximating Vauvenargues and a note saying they would send *The Constant Nymph* the next day! Later I got what I wanted. Yes, Vauvenargues has some merit, but it was a misfortune to have his *Maximes* bound up in the same volume with La Rochefoucauld. Once in a while he seems to be ahead of his time and to hit the eternal, but in the main he is a gentle joy, not too pungent for the sick room. French talk about virtue and envy, etc. etc., doesn't nourish me greatly. *Adolphe* interested me to reread — interested me by the reflections it suggested as well as by its acute analysis. How deeply concerned are the parties to the drama, and how little you care about them. The woman, of no intellect, could not expect to keep the man long, the man taking so seriously an absorption springing from the lumbar region. But I grow too detached with age. Perhaps I am too averse to any over-serious treatment of the personality as a definite indivisible unit, needing self-respect and striving for God's respect, instead of a shifting nebula of uncertain outline and content varying with the [aurora?]. I swear I believe many errors and much unhappiness are due to the view generally taken, recommended by religion as a duty, felt by good breeding as a foundation, which in my opinion is the true sin against the Holy Ghost. But I am so much alone in my thinking that if I grew very articulate they would shut me up.

I have spoken of the sickroom — I am doing very well and have nothing to complain of, only am not much good for a few days. I am not making the most of my time but dozing and dawdling, and trying to feel irresponsible. *A bientôt.*

Yours, O. W. H.

16 Warwick Gardens, 13.II.26

My dear Justice: Everything now is arranged. I have my passage booked, a *visé* from your consul on my passport, and nothing to do except wait for March 20. I assume that I shall not be detained at Ellis Island, as I have never been divorced, am not an anarchist or a polygamist, and do not believe in the violent overthrow of established governments. I need not tell you how the prospect of talk with you both heartens me. It will be a great adventure.

My chief news will, I think, please you. I have been given the chair of political science in the university. That means 33% on my income, the

chief say in the teaching of the subject in the university as a whole, and the consequent chance, about which I care much, to make the department really important. I am very pleased about it, as there are all kinds of plans in my head for which I can now seek fruition. And if I can get someone like Eugene Meyer¹ to give me a small fund for the purpose of publication, I think I can get some good work into the hands of scholars. The competitive field was rather interesting. (1) A young Balliol man, conscious, I gather, of effortless superiority to the rest of mankind; (2) an Australian who explained in his letter of application that he would, if elected, make Plato "live again," an achievement in reincarnation which he had seemingly practised for some years in Sydney; (3) an elderly K.C. whose practice was beginning to dwindle and who built his claim on the ground that he had published an analysis of Austin for students; (4) a clergyman who had written a book to prove that the British empire was God's Kingdom on earth and "would welcome an opportunity to expound this vital thesis to a larger audience"; (5) an American whose name I know not but who informed the Board of Advisers that he had published sixteen text books and was now preparing his seventeenth. I was very solemnly interviewed and the clergyman has written to me regretting my election as it stands in the way of his doing God's work. I have written apologising humbly and suggesting that a university is really far too narrow a sphere for such a message. He thereupon replies that he is glad to see that I appreciate his importance and indicates that he hopes to occupy the chair at a later date. This I take to be a polite way of looking forward to my early demise. But as I hear that he wrote recently to the Archbishop of Canterbury suggesting his suitability for a vacant bishopric on the ground "of attainments which united the learning of Hooker to the persuasiveness of Jeremy Taylor," I presume that it is one of those cases where consciousness of great powers is rendered the happier by the sense of their frustration.

The week has gone quietly in work. In reading I have mainly been busy with Clarendon whom I had not read since I was a schoolboy. I found him stately but irritating; and the impression is like you would feel if you found yourself naked amid an audience in full Court dress. Then a good dose of the *Spectator* which I found wholly delightful especially the attractive essay on the Bank of England. Also I read Trotsky's book on the future of England,² which I thought able in parts but also full of elementary misunderstandings of the British Constitution and the habits of our people. But what struck me more than all was to realise (perhaps you had noticed it) that the whole Bolshevik psychology is simply Hobbes redressed in Marxian costume. It's very interesting put in that way for

¹ *Supra*, p 506.

² *Whither England?* (1925).

it throws a flood of light on recesses otherwise dim and explains, above all, the terrorist element in their actions. What puzzles me in the book is the *naïveté* with which an obviously able man assumes that *ipso facto* his violence is right and your violence wrong. His diagnosis of some of our statesmen has real insight; but, equally, some of it (to me) is absurdly wrong. Did I mention to you last week J. A. Hobson's *Free Thought in the Social Sciences*? I enjoyed that greatly; and I was impressed but not convinced, by a clever German book by one Hans Kelsen of Vienna, *Allgemeine Staatslehre* which puts the Hegelian case with, I think, great ability, even though its ability does not seem to me less disastrous. And, lastly, a good swig of de Quincey. Apart from the famous things, did you ever read his essays on political economy? Without being especially original, they are amazingly able statements of the classic Ricardian doctrine; so much that I have asked the Oxford Press to reprint them cheaply for my students.

I had a good bookhunt last week and found some pleasant trifles *circa* 1640. But what pleased me much was to find a superb graving of Voltaire by Moreau le Jeune for a couple of pounds. It is done from a wax-statuettes and brings out almost diabolically the verve and *diablerie* of his features. It is in pretty good condition, though you, as a connoisseur in these matters, would complain of the cropped margins. And one other thing I bought which, child-like, pleased me, namely a copy of Blackstone given by him to Mansfield for which I paid ten shillings. I was amused by the fact that the set does not show signs of much usage. Two or three pages in each chapter have not been cut. But, *après tout*, Mansfield had no need to read Blackstone.

I must not forget to tell you of the death of a fellow of Trinity Cambridge aged 97. His funeral was attended by a brother of 99. The latter was much distressed and said he had always told his junior that theological research was not compatible with longevity. "God," he solemnly told Rutherford, "does not mean us to pry into these matters." After the funeral the old man went back to Trinity and solemnly drank his half-bottle of port. He was asked his prescription for health and said with great fervour "Never deny yourself anything." He explained that he had never married as he had found fidelity restrictive as a young man. "I was once engaged, when I was forty," he said, "and I found it gave me very serious constipation. So I broke off the engagement, and the lady quite understood." He was very anxious not to be thought past the age of flirtation. The vicar, he said, found his presence very helpful at evening parties. I thought he was sheer delight for it was all so absolutely unconscious, but, to my amusement, two deans were shocked beyond words. I took the old man back to London and put him on his way to the Midlands and have rarely had a better journey. Twice he refreshed himself lustily from a flask of

claret and once insisted on my sharing it with him. He told me he still had his pint of champagne for lunch but that it did not mean to him what it used to do.

Our love to you both, and every good wish,

Ever affectionately yours, H. J. L.

Washington, D. C., February 21, 1926

My dear Laski: This ought to be the last or the last but one from me before your welcome coming. I hope, I repeat, that you have made sure that there will be no obstacle to your entry here. I am ignorant as a child about it, beyond a vague notion that one is liable to be surprised. I don't know either of the books you mention¹ (*Religion de Jean Jacques* and Cliffe Leslie), and I vainly tried, though wobbly in my memory, for those volumes on the history of politics and the influence of the Reformation. It didn't matter much, for after getting away from the flabbiness of a cold I walked into the dentist's trap and am no free man. I have, however, touched off two little dissents so far as to get them in proofs — one concurring in a few words with a colossal piece of work by Brandeis,² and the other on my own, concurred in by him, for not [*sic*] applying the XIV Amendment to a state case that is before us.³ Also I have read one or two books, the most notable Symonds's translation of Benvenuto Cellini, not read since boyhood when Roscoe's version was all we had. I could not but chuckle to think that I saw under Symonds's would be cosmopolitanism the inner domination of the "We don't do that in England," which is so apt to be the Briton's last word. I dare say the same local standards prevail elsewhere but I am more conscious of it with the English, although even Montesquieu taught one to associate Little Pedlington with the Boulevards.

I recur to your letter to say that I read something of Hobson's years ago but was not impressed, but what you say interests me. . . . Yesterday p.m. I went to my shelves and took down two volumes nearly at random. One was a life and sermons of Whitefield, interesting mainly because he is buried at Newburyport. I think you prostrated to his coffin when we went over there one day. I didn't read much but was reminded of Sainte-Beuve and Pascal by his discourse on election and reprobation and of what is said of Edwards by his satisfaction in believing that most of us

¹ *Supra*, p. 826.

² Not identified.

³ Probably in *Schlesinger v. Wisconsin*, 270 U.S. 230, 241 (March 1, 1926). The majority of the Court condemned a state statute, under the Fourteenth Amendment, which created an absolute presumption that gifts *inter vivos* made within six years of death were made in contemplation of death. Mr. Justice Stone joined with Brandeis, J., in concurrence in Holmes's dissent.

are eternally damned. I found his language rather surprisingly modern and direct. Soon I put him down and turned to the other, which was Volume 1 of an old 4 volume edition of Horace Walpole's letters which began with his remembrances of the Courts of George the First and Second. I find that so delightful for an irresponsible moment that I think I shall keep on. Hang it, one can't be seeking improvement all the time. Mostly I avoid books that don't help to strengthen the foundations or at least add a flying buttress, but if I ever am to be allowed any levity it is time for it now. Yet it doesn't come natural to say, My time for expecting to contribute anything is over — serious amusement is all that is left. I dunno — one goes up and down. I think that I will go forth and walk an inch and a half. I did so yesterday for the first time for a fortnight. If one has rather a nervous doubt it is astonishing how it gets on your nerves — as if it made any difference if he knocked all my remaining talk down my throat. However, one must accept one's irrational interest in oneself as a way in which the cosmos keeps up the circulation in its extremities or secures local [illegible]. So fare you well for a time. I am a little anxious about your dates. From March 22 to April 12 we are adjourned, then we sit till May 10. I hope for the best.

Affly yours, O. W. H.

16 Warwick Gardens, 21.II.26

My dear Justice: A delight of a letter from you (29.I.26) warmed my innards. I don't think myself that there is much essential difference between us on sovereignty except differences of emphasis. I agree (I) that the Courts must enforce law and take law to be a command of the U.S. or a similar authority competent to act; (II) that it is not possible to go behind that ultimate source of reference at present. I think myself that any state, the U.S. or other, should be responsible for the tortious acts of its agents, and I should ultimately like to see large functions *e.g.* immigration, tariffs, colonial control, in the hands of an international and not a state authority. And, internally, I should want to do all I can to make the *de jure* limits of the state coincide with the *de facto* limits. Indeed, I suggest that if you will, wherever the word "state" is used substitute the word "government" and think of actual persons issuing orders that movement to concreteness makes the notion of a limit laid down by law quite intelligible *e.g.* I don't want the King in Parliament to be able easily to suspend *Habeas Corpus*; I want it to pay if its agents in the Admiralty invade a patent granted by the Board of Trade; I don't want a man of war to be able to evade paying damages if its captain has handled it carelessly, and so on. I gather that you would not vehemently dissent from all this even if you doubted its wisdom.

It has been a pleasant week. First a happy dinner at Haldane's —

among others there Rosebery. He is like a professional fog and believes, *à la* Mantalini, that the world has gone to the demnition bow-wows. The only thing that pleased him was when I said that he spoke like an earnest Catholic bewailing the Reformation, for it enabled him to add that he was more like an earnest Catholic who did not really believe his own dogmas. Dilke's niece was there and while the women were in explained at length the injustice of fate in depriving her uncle of being a certain Prime Minister. When they left, Haldane, Rosebery, and Gosse set to work and stripped Dilke naked of every quality moral and intellectual. I said to Haldane that they had left him only his money; no, said Rosebery, we leave him his whining hypocrisy. Also a pleasant dinner for Salvemini the Italian exile.¹ He made, I thought, one good remark to the effect that in Caesar's time he would have been invited *à la* Cicero to commit suicide; now he waited for some one else to kill the tyrant. He gave us incredible details of Mussolini, but I think truthfully. He is a first-rate historian with a real sense of evidence and I do not think would consciously lie. Also he gave us some wonderful glimpses of D'Annunzio in one of his purple moods. You must, please, remind me to tell you the story of D'Annunzio and the railway clerk. It is too long to write, but too perfect not to be told.

In the way of reading I recommend strongly two things. The first is Mrs. Webb's *My Apprenticeship* — a wonderful account of English opinion in the years 1860–90. You will like especially the illuminating glimpses of Herbert Spencer of whom she paints one of the most interesting and sympathetic portraits I have read. The other is Winfield — *The Sources of English Law*,² a Harvard book which I thought both able and attractive. Birrell, who usually abhors law books, was enthusiastic about this; and he also put me on to a new American Life of Godwin by one Ford Brown³ which I found so fascinating that I read it until two this morning in bed. I can't decide whether Godwin was in money matters an illimitable muddler or whether he was really a conscious blackguard. Certainly he was without exception the most self-righteous person not in orders I have ever met; but it may be that his early training as a dissenting minister was responsible for that. There are divine glimpses in the book of Shelley and Charles Lamb — the latter, as always, the most charming of human beings. I have also read a good life of Wordsworth who seems to me a loathesome creature. Birrell said he would give up all poetry after Shelley for the "Prelude" which appalls me, for though there are passages to which I respond I find intolerable *longueurs*. Are you a

¹ Gaetano Salvemini (1873–); distinguished historian and anti-Fascist, who left Italy in 1925, and from 1930 to 1948 was lecturer on history at Harvard.

² Reviewed by Laski, 6 *Economica* 237 (June 1926).

³ Reviewed by Laski, 3 *Saturday Review of Literature* 191 (Oct. 16, 1926).

Wordsworthian to the hilt? He always seems to me in temperament what Harriet Martineau would have been if the latter had been dowed with poetic talent. Also I had a shot at some Proust, but I was bored to tears. It was like living in a hot house in which the residents compare notes on their paleness and measure their birth in terms of the delicacy of their skins. I do not believe that the analysis, however consummate in power of handling detail, of people who have no real human value or significance can possibly be as important as is made out. I believe in fact that great subject-matter as well as great formal skill is necessary to great art. If Rembrandt paints a peasant woman the history of the ages of land tenure is there; it is the power to universalise an idea in miniature that gives it significance. But you read Proust and watch a lot of silly marionnettes doing silly things in great detail and solemnity and there is no significance of moral or intellectual value in what they do. *Nitchevo!* as the Russians say, and I go back to Dickens or George Eliot with a sense that they really knew how to amuse or to illuminate and that one or the other is the story-teller's job.

I imagine that this letter ought to reach you round about your birthday. You know with what eager affection I send you good wishes. Now the calendar must be set for 90. It is great to have you alive. But please take care; for I expect to absorb your energies for a relentless week of talk.

Our love to you both,

Ever affectionately yours, H. J. L.

Washington, D. C., March 4, 1926

My dear Laski: (I always remember that damned *My* just too late. I am told that to omit it is like omitting the personal pronoun, as when one says "Have been very busy" etc. I don't believe it, but am bullied by the suggestion.) This is just a word to say how I am looking forward to seeing you and hoping this will catch you before you start. I have been mad with work, and distributed another little 14th Amendment dissent in which I shall have Brandeis and I think Stone, this morning¹ — an opinion distributed Tuesday on patents that I hope I shall be allowed to announce on my birthday next Monday.² You warm my heart with your good wishes. No, I am not a Wordsworthian to the hilt, but I do think that whereas Mill spoke of him as the kind of poet that a man might learn to be, he had by flashes the power to utter the unutterable quite as

¹ *Weaver v. Palmer Brothers*, 270 U.S. 402, 415 (March 8, 1926). Brandeis and Stone, JJ., concurred in Holmes's dissent urging that Pennsylvania could constitutionally forbid the use of sterilized shoddy in the manufacture of bedding.

² *Alexander Milburn Co. v. Davis-Bournonville Co.*, 270 U.S. 390 (March 8, 1926).

much as Shelley. He stumps along by your side, a bore in a brown coat, and suddenly he goes up and you find that your companion was an angel. Proust gave me pleasure that I should find it hard to analyze, but he brought back the feelings of youth and the romance that gilds it. Your general remarks I agree with, but Rembrandt could make not merely a peasant woman but a beef carcass sublime. I agree, however, in substance. You must see the infinite, *i.e.* the universal in your particular or it is only gossip. Did I ever remark to you that philosophy after its flights ends in a return to gossip? It goes ahead and formulates as far as it can the laws of the cosmos, but it ends in the purely empirical fact that the cosmos is thus and not otherwise — an unrelated, unexplained datum, which is gossip and nothing else. I believe I saw the statuette of Voltaire of which you speak at an 18th century exhibition in London once. It had just the *diablerie* of which you speak and made a deep impression on me.

Your old man seems a companion to an old woman I heard of who was asked what she had done to live so long and said, "Oh, I lived human."
A bientôt. *Affly yours, O. W. H.*

192 Brattle Street

Cambridge, Massachusetts, 29.III.26

My dear Justice: I have been here since Saturday, and the days with Felix and Marion are, literally and figuratively, bathed in sunshine. *Haec olim meminisse juvabit.*

I propose next Saturday night to travel to Washington. So, if I may, I will come in to lunch on Sunday. Will you send me a line to say that is convenient?
Ever affectionately yours, Harold J. Laski

Washington, D. C., March 30, 1926

My dear Laski: It is rejoiceable that you are here — I did not realize it until your letter came just now — I certainly shall expect you at luncheon next Sunday 1:30 o'clock, 1720 I Street.

A bientôt.

Affly yours, O. W. Holmes

On Board the Cunard R.M.S. "Berengaria"

April 23, 1926¹

My dear Justice: I literally have no words to tell you what those days in Washington meant to me. I did not need to revise beliefs, or renew allegiance; those had been made *in aeternum*. But I found that all I had treasured as a great memory had the old beauty and more. I put it in

¹ A brief note from Holmes, dated April 5, 1926, is omitted.

the treasure house of remembrance as among the great things I have experienced. To you both my old homage and affection made deeper and more intense by new richness.

America has been a great adventure. To find Felix not less electric than ever, and to take up talk with him as though it ceased but yesterday was superb. And I am so much in agreement with many of the results of Brandeis's thinking that I had from him (apart from the fresh sense of his compelling charm) the satisfaction of guessing that my own diagnosis was not entirely wrong. New York was especially kind to me. Mack, J. especially helped me to meet Cardozo and Hough;² the former a nature as exquisite as his mind is perceptive, the latter a fine, masculine mind with something of the nature of Bluff King Hal at its base. I saw your ex-secretary Benjamin,³ and his charming young wife. Morris Cohen I had a great evening with. He has mellowed greatly, and I was particularly glad to find that he and I (like you, I believe, too) had not dissimilar views on Pound. I met also a young physiologist from the Rockefeller Institute, Alfred Cohn,⁴ whom you must sometime meet. He has, I believe, a big reputation; but even more important, he has a wonderfully tempered mind. And the *New Republic* gave me a dinner at which the talk was quite thrilling; I learned much of an America too often hidden from the sojourner of so brief a moment as mine. I felt, again, too that with many limitations and a certain heaviness of method, Croly is really a big fellow, patient, curious, sincere and penetrating. So long as there are people of his quality around, your future as a nation is not without its guarantees.

But this is not a letter so much as a salute. I need not tell you both how warm is my affection and how eagerly it greets you. I shall resume writing so soon as I am straight at home.

Ever affectionately yours, H. J. L.

Washington, D. C., May 13, 1926

My dear Laski: Your letter from shipboard moved me in my marrow, but I have delayed in writing from day to day owing to the uncertainty and anxiety I have felt and feel as to your public affairs.¹ I suppose you are in the thick of it — I have much confidence in the business sense of the nation but one can't talk freely while things seem to hang in the balance.

² *Supra*, p. 601.

³ *Supra*, p. 457.

⁴ Alfred Einstein Cohn (1879–), distinguished and creative research physician; author of *Medicine, Science and Art* (1931), *No Retreat from Reason* (1948).

¹ See, *infra*, p. 838, note 2.

I shall say but a word or two therefore. (1) I also met Cardozo the other day and thought his face beautiful with intellect and character. I had only a limited chance to talk during the short time he was here — with others.

(2) I read with surprised satisfaction Murray's *History of Political Science*, etc. His slight whiff of the parson or the Hegelian at moments did not prevent my finding it most interesting and compactly instructive.

(3) I am reading out of regard to my friend Wu, Stammeler's *Theory of Justice*. I have read 228 pages and though he seems a noble-minded moralist, I confess so far it has been simply marking time, and with tedious iteration impressing upon the reader the difference between an abstract scheme regarded as applicable to all possible controls of the law, and the empirical contents. As I don't believe the postulate — and think morality a sort of higher politeness, that stands between us and the ultimate fact — force — I am not much edified. Nor do I see how a believer in any kind of evolution can get a higher formula than organic fitness at the given moment.

(4) Your impression of Croly is like my own, but he can't write — and he tends to give a pedagogic tone to his discourse that makes me shrink from it.

I tremble as I send this off — but affectionate thoughts and hopes go with it.

Yours ever, O. W. H.

16 Warwick Gardens, 2.V.26

My dear Justice: Let us resume operations. I arrived home on Wednesday after a wonderful voyage, made still more pleasant by reading (a) Bowers's *Jefferson and Hamilton* which I really enjoyed and (b) Sandburg's *Lincoln*, the first book I have read on him which makes you feel the bigness of the man even in those early years; and it is, besides, a really absorbing picture of life in the Middle West when it was still a frontier province. I hope you will take it to Beverly Farms for the summer, as I am sure you will get the same pleasure I did from it. I amend this, to avoid metaphysical objections, to the "same sort of."

I had a most interesting visit in New York before I sailed. A dinner with Cardozo whom I found quite enchanting; it is not often that a mind so attractive goes with a character so sweet as his. I met, too, Hough whom I liked as one likes the bluff sea-captain type. He has, I should judge, a strong rather than a profound mind without much delicacy of perception but with an immense grip of what he has seen. I saw, also, Learned Hand, who is as attractive as ever. The sceptic in the judge is a great combination. But of all those in New York I was won, or rewon, most by Morris Cohen. Not only the width of mind, and the ability to play with

ideas, but a poise and a new equanimity which made him a really arresting figure. I found (it made him even more attractive) that we were largely in agreement on essentials. We both thought Pound had reached the stage of repetition. We both thought idealism was done. We both had the same doubts of America. The *New Republic* people were very good to me, and I was again impressed by Croly's honesty and simplicity of character. And New York was given added delight by continual *recontres* [*sic*] with old pupils in the Harvard Club who surprised and touched me with the warmth of their greeting.

Well, I am glad to be back; but I have rarely spent so interesting and profitable a time as those weeks with you all. It was not merely the joy of finding that the impalpables do not rust with time; nor even the acute pleasure that the feeling-out of other minds gives one (after all the greatest of pleasures). It was the experience of being plunged suddenly into a totally different civilisation with different assumptions at its base. If I wasn't entirely convinced, I was throughout fascinated; and the spectacle, all in all, is impressive. I am going to try and put some thoughts about it into the *New Republic*,¹ so, on the assumption that you will read them there, I shall not bother you with them twice over. For your private ear, I want to add that the days with you and Felix had a quality that one encounters only two or three times in life. I shall not forget them.

I came back to find Frida and Diana both very fit; but we tremble on the verge of terrible events here and I do not know what will happen.² I have a deep sense within me that before the general strike begins on Tuesday, Baldwin will somehow have found means of accomodation [*sic*],

¹ No such article was published.

² Since mid-April the crisis in negotiations between the miners, the employers, and the government had developed with mounting intensity. Since April 30 there had been a total stoppage in the production of coal and on May 1 the Trade Union Congress announced that a general strike would begin on May 3. Mr. Baldwin, and even more vigorously, Mr. Churchill, Chancellor of the Exchequer, treated the action of the Trade Union Congress as a lawless, revolutionary effort to upset the constitutional system. The Government, when the general strike took effect, stood by the proposition that it would not participate in negotiations concerning the shutdown of the mines while the general strike continued. On May 12 the general strike came formally to an end on the understanding that negotiations with respect to the coal dispute would be reopened forthwith. Those negotiations, however, fruitlessly dragged on, the miners stanchly refusing to accede to the employers' demand, supported by the Government, that wage reductions and longer hours were essential. The coal stoppage continued throughout the summer, and it was not until November that the miners finally returned to work, on terms far less favorable than those which had been offered to them in April. Laski wrote of the coal strike in 122 *Nation* 578 (May 26, 1926) and of the general strike, *id.* 663 (June 16, 1926). See also 56 *Survey* 416 (July 1, 1926).

for, as I wrote to him last night, the breakdown seems to me rather the misunderstanding of tired men than any ultimate difference. I hope so; for a general strike, if at all prolonged, would loose forces of a kind that make for changes too vast to come rightly or wisely without deliberate plan.

The routine has begun, and I do not find it irksome even after those days of unrestraint. It is a little sad from the fact that one of the dearest of my colleagues died suddenly after an operation and a great teaching influence has gone. But one learns, I think, as one grows older that the vital thing is less to repine than to close the ranks. *Inani perfunctor munere* is better accomplished by closer attention to one's job than in the weaving of wreaths.

I did not, I think, tell you that I had some book adventures in New York. I did not find the one thing I wanted for myself — a cheap set of the U.S. Supreme Court Reports. But I found the rarest work of the old Mirabeau — the *Leçons* [sic] *économiques*;³ and, also the Laboulaye edition of Montesquieu for ten dollars, it being usually both rare and costly. This was the more attractive in that it was well-bound and, also, had the correspondence bound uniformly with it. And I bought the works of Fisher Ames on the advice of Rosensohn and found him an able and interesting fellow. *Somme tout*, I brought back some fifty volumes and one, Paxon's *History of the American Frontier*, I look forward to for new insight into America.

Now I must end and go on with the vast task of arrears of correspondence. My love and homage to you both.

Ever affectionately yours, H. J. L.

16 Warwick Gardens, 23.V.26

My dear Justice: A grand letter from you yesterday was like a fragrant scent in a dismal world. You can imagine that it has been a time of immense strain, made, I think, the worse by the fact that it was all perfectly unnecessary. . . . You will not, I am sure, have been deluded by all the talk of revolution and challenge to the government. From first to last it was a purely industrial dispute carried out with amazing good temper and orderliness by millions of men who could not without shame see the miners' wages reduced to between ten and twelve dollars a week. I speak whereof I know; for I carried out the earlier private negotiations with the government on behalf of the unions, and the ultimate settlement was upon a draft I had written. This, of course, is strictly between ourselves; I have not even written it to Felix. And you will not need me to

³ Presumably the Marquis de Mirabeau's *Lettres économiques* (1770).

say that, on this issue, had the question of a challenge to constitutional government been in question, I should not have tried to help the trade unions. My own feelings were put admirably by Keynes in the *New Republic* of May 19th.¹ It was a piece of bungling, due to hotheads in the cabinet who wanted to "teach labour a lesson." I come out of it with intense respect for the qualities of the working-man. And of those in high place with whom it was my business to deal, Baldwin and Birkenhead won new esteem from me. The first isn't able, but he really has character and an absence of vindictiveness, though he lacks strength of will. Birkenhead was amazing. Once you broke down his oratorical habits, he was resourceful, quick, full of intelligence, and with a great flair as a draftsman. . . . Well, it was a fortnight's grim labour, which ought, at least, to enable me to write a much better book on communism than I could have done before. It also convinces me that there really isn't much to be said for "muddling through." You may win your end, but you pay a heavy price. The miners are still out, and unless there is a return to my basis, they will stay out. . . . Now we are trying to get the parties together on the old basis. But the miners having seen the basis thrown over once the general strike was called off were naturally suspicious, and it will, I fear, be a long job. The suffering in the mining districts is intense and I cannot find words to tell you what I feel about their powers of endurance. They have five and ten shillings a week strike pay, and they just set their teeth and bear it. In an ultimate sense, they are unbeatable people; for, as I told the Prime Minister yesterday, even if they lose this fight, they will strike again as soon as the tide of trade turns. They are Cromwell's Ironsides, and they do not know what it is to be beaten.

As you can imagine, I have done no reading during these days; only since Wednesday, indeed, has life been normal again. We had a good two days in the country with the Webbs, after the strike was over; and last night McIlwain came in and we had a grand book talk, in which I had that endless satisfaction which comes from seeing a man with a fine library envy you your own treasures. I have paged Graham Wallas's new book, *The Art of Thought*, but it seemed to me elegant trifling; and this a.m. in bed I read Hirst's *Thomas Jefferson*, with the feeling that he did not know much about his subject. But I can't really gossip until next week, when I shall be back in midstream. This is really only an interim word of affection to tell you both that the old landmarks stand.

Our united love,

Ever affectionately yours, H. J. L.

¹ Keynes, "The End of Peace by Negotiation," 46 *New Republic* 395 (May 19, 1926).

Washington, D. C., May 15, 1926

My dear Laski: This is a postscript to my manuscript of the other day, and is written to acknowledge your first letter from home — as you say, on the verge of terrible events. My anxiety still makes it hard to write. The papers speak as if a settlement were coming, but I feel no security until the fact is accomplished. That Baldwin is on one side and MacDonald on the other seems to promise a rational result. I think I have told you before of going, 60 years ago, with Mill to a dinner of the Political Economy Club and finding the subject for the evening discussion to be whether the financial policy of England should be shaped to meet the predicted exhaustion of the coal in 90 years.

My *ennui* with Stammer continues, although some of his laborious applications of the Golden Rule have a little novelty in form. Lord, Lord, I wonder if you would get nourishment from him. I believe men have prolonged life by boiling their brogans.

I am a wreck this evening, though somewhat restored by slumber, from having got up half an hour or more earlier than usual, hurried through dressing, and going and sitting in the sun on the steps of the capitol to see the Hopi Indians do their dances, winding up with the snake dance, though it was said they were not allowed to bring the full-fanged rattlesnakes that they played with at home, and had harmless serpents squirming about on the stage, around their necks and in their mouths. Again I say to myself, the joy of life is the neglect of opportunities. However, this one is over and I am tolerably serene now.

Do you know Miss Elizabeth Shepley Sergeant? She writes intimating a call by and by. We had a clever chat once and I think she will be better than Stammer. I have read some good pieces of hers, using superlatives about people I did not know. I slightly suspect her of hyperaesthesia (not speaking pathologically), and yet she was very rational about Amy Lowell who was a friend of hers. Here the mere fact that a person is at ease with the more delicate allusions and assumptions of intellectual or literary interest distinguishes him. It may not go very deep. Many years ago Haldane said that the clever young ladies who seemed so on the hair trigger got their knowledge from reviews, not from the books. But I always have remembered what one of them said to me: "You Americans wait for us to finish our sentences."

The evening paper is calming. It seems to indicate that the worst is over. Also it says that the chap that started to fly over the pole in a dirigible has landed in safety after a silence that made one fear that he was lost.¹

¹ Roald Amundsen (1872–1928) on May 11 had started from Spitsbergen on his dirigible flight over the Pole. He landed on the 14th at Teller on the Bering Sea.

My wife has read a very engaging book to me, Pupin, *From Immigrant to Inventor*. He is a Serb now at Columbia and Stone promises to bring him in some day. He speaks with a reverence for the saints of science that gives joy to my heart.

My love to you and yours — and may this find you all in peace.

Affectionately yours, O. W. Holmes

Washington, D. C., June 4, 1926

My dear Laski: An absorbingly interesting letter from you gives me the only light I have on the recent great affairs except an article by Keynes, no doubt the one you refer to. I received a letter from one of a different mode of thought speaking contemptuously of MacDonald, but I don't know why. I have no comments except my already expressed general impression that England as a whole appeared to great advantage. I have nothing to tell. I am in the details of approaching departure — on Monday we adjourn. There were 29 *certioraris* to be examined this week, of course many opinions coming in at the last minute — one dissent by me, concurred in only by Brandeis, though I think it pretty plain.¹ One dissent from me by MacReynolds [*sic*], *solus*, concluding that the argument sustained by him "cannot be vaporized by gestures of impatience and a choleric 'obviously'"² which makes me smile, the more that I don't think it hits or is aimed at anything in my opinion but rather at my attitude at the last conference — which I am afraid was not as respectful as it should have been. Poor MacReynolds is, I think, a man of feeling and of more secret kindness than he would get the credit for. But as is so common with Southerners, his own personality governs him without much thought of others when an impulse comes, and I think without sufficient regard for the proprieties of the Court. I don't mind the above a bit so far as I am concerned, but I think it improper in an opinion. Formerly, according to my recollection, he was really insolent to Brandeis, although now there is at least a *modus vivendi*. When I was in the hospital he wrote a charming letter to me, which I shall not soon forget. I have had also business matters to attend to — tax return, probate return, etc., but thanks to my secretary they are polished off. If left to myself I get

¹ *Frost and Frost Trucking Co. v. Railroad Commission*, 271 U.S. 583, 600 (June 7, 1926).

² *Morse Drydock and Repair Co. v. Steamship Northern Star*, 271 U.S. 552 (June 7, 1926). The dissent of McReynolds, J., as published concluded with the assertion that he agreed with the trial judge and ventured "to think that the argument in support of his conclusion cannot be vaporized by mere negation." *Id.* at 557.

ballled up by some detail every time. I have read nothing. I had a call the other p.m. from Miss Elizabeth Shepley Sergeant. At parting she renewed the statement that she made on a previous occasion some months or more ago that she wanted to write about me. What a dame not learned in the law can find to say I don't know. I said that so long as I took no part in it people were to write or not as they liked. . . .

The dentist has let me loose with his blessing — and in short the waters are accumulating in the dam for a bust toward Boston next Wednesday evening. I expect that my next to you will be from Beverly Farms.

Affly yours, O. W. H.

16 Warwick Gardens, 30.V.26

My dear Justice: A delight of a letter from you is a landmark in these grim days. The miners are still out, and industry, as a result, is inflicted with a kind of creeping paralysis. We have won a remarkable bye-election in London, in which a government majority of two thousand was transformed into a labour majority of four thousand. It has given the government a fright, and we cherish a hope that it will persuade Baldwin to act, instead of standing idly by, doing nothing. It is all very well for him to protest that he loves the good and the beautiful, but that doesn't butter any parsnips. I gather that the nigger in the woodpile is the good Winston, who is never happy unless there is a fight. The other big event of the week is the new quarrel between Asquith and Lloyd-George.¹ I never thought I should live to sympathise with the latter, but here I think that Asquith has made a profound mistake by trying to set up standards of party orthodoxy to which no man can possibly be asked to conform. I don't know if you saw the correspondence? I don't suppose that since the Russell-Palmerston row over Louis Napoleon, one distinguished statesman has ever so written to another. It doesn't seem possible that they should ever collaborate again; and it means, I should imagine, the definite disappearance of liberalism as a force in party affairs. It is a tragic ending for Asquith's career, but he has proved so utterly incapable of adjusting himself to the demands of a new age that the collapse was inevitable. Yet I am enough of a traditionalist to see with regret the end of power which goes back directly to 1832 and the great epoch of reform,

¹ On May 20, Lord Oxford, supported by other leaders of the Liberal Party, had written a letter to Lloyd George severely reprimanding him for his defection from Party policy in the matter of the general strike. The letter led to an acrimonious dispute between the principals and their supporters and finally in mid-June the controversy sputtered out with Lloyd George the clear winner.

and, indirectly to the Revolution of 1688. The funerals of historical entities are melancholy events.

Frida and I used to know well the Miss Sergeant whom you have been seeing, and to like her well. She had one or two aspects, *e.g.*, admiration for Mexican Indians, which I thought a little *ennuyant*, but in general a woman of real taste and insight, without a trace of humbug, like that intolerable Gertrude King who struck philosophic attitudes for the applause of a group of young lawyers all of whom were totally ignorant of philosophy. I cannot stand a certain pretentious Anglo-American type of woman who has all the latest "culture" on her lips, and is steeped in the latest slang of the market-place. The other day I was at tea with Birrell, and he had a visitor from Chicago who put him (and me) through a catechism about our "reactions" to this and that fashionable figure in letters. At last I told her frankly that I was a purely passive recipient of sensations who never dared to examine their meaning; and that the last biography I had read was Boswell. She looked at me in pure amazement and said that I must be very "out of things" at parties. I said that I very rarely went to parties. "Good heavens," she exclaimed, "what do you do with your time?"

I have seen few people since last week as Whitsun has sent them away. But McIlwain of Harvard has been here a good deal, and yesterday we devoted the day to a splendid book-hunt together. We bought a few choice items, of which my main prize was the *Anti-Mariana* of Roussel (1610) as rare a thing as there is in political literature and cheap beyond words at fifteen shillings. We saw things that make one weep with envy for the ampler purse. But we agreed that if one can buy illimitably half the joy of battle has gone. McIlwain is a great fellow, with extraordinary knowledge, and a great fund of original ideas. He has a certain dourness of temperament, which may be the result of generations of Calvinism; but I know no historian in my line since Maitland who is so suggestive. The Harvard people ought to be very proud of him.

I hope that my articles in the *Michigan* and *Harvard Law Reviews*² will have come safely to you. I think you will agree with them in general, for they are really humble exercises in discipleship. Certainly the Harvard one is no more than the application to English conditions of *Noble State Bank v. Haskell*. Haldane, to my great surprise, is very hostile to the one on the judges. He denies (1) the possibility of good choice by judges and (2) that political influence really makes much difference. I am not in the least convinced, for I can see in recent years here definite signs *e.g.* in Sumner of a definite interaction between his decisions in the Lords and the speeches he (very wrongly) makes there in eager defence

² See, *supra*, p. 808.

of Toryism. It is as though you were to speak in strong defence of Coolidge in the Senate and then to expect that cases to which the government was a party would come to you quite colourlessly. I wish that people could be persuaded to realise that judges are human beings; it would be a real help to jurisprudence.

Of reading, a good deal in a quiet way. First the translation of Stammler, which I do not find very impressive. He seems to me to be platitudinous and in the air, and to lack precision both of statement and ideas. I doubt, indeed, whether one can get a satisfactory theory of law deductively from a set notion of justice. Analyse what judges do, explain why you don't like it, and make a skilful argument to show that your personal preferences had better be mine. But to dress it all up in categorical imperatives and universality is, I think, to give very big names to very small beer. Then I read with extreme pleasure Declareuil's *Histoire de droit français au 1789* — an admirable book, the best on its subject I know. It is learned, acute and revealing, with not a little of Maitland's power of happy phrase. I think you would find it a good book for Beverly Farms. I tried to read Haldane's new book *Human Experience* but found myself lost in Hegelian quicksands. It may be good, but I don't eat with pleasure that kind of apple and don't see why I should.

Our love to you both. I think I shall risk sending my next letter to Beverly Farms.

Ever affectionately yours, H. J. L.

Beverly Farms, June 17, 1926

My dear Laski: Your delightful letter met me here, forwarded from Washington. We stopped at the Touraine from last Thursday until Monday p.m. and then motored down with the faithful Beverly man — cold, and the furnace in pieces, but electricity and wood fires kept us going until the furnace was up and started. I was really impressed in Boston by two things — the South Boston Marine Pond and Aquarium and some of the harbor structures, and the Franklin Park Zoo. There was a sort of bigness of conception that reminded me of what Borglum¹ the sculptor recently said to us of a new class of young engineers with conceptions worthy of the country. Also I brought down from the Athenaeum a book by Carver, professor of political economy at Harvard, *The Present Economic Revolution in the United States*, which cheers my optimism. He, like myself, thinks the talk of class war is humbug and that we are finding a solution by the working men becoming capitalists, as illustrated by

¹ Gutzon Borglum (1871–1941), American sculptor, best known, perhaps, for his heads of Washington, Jefferson, Lincoln, and Theodore Roosevelt carved on the face of Mount Rushmore in the Black Hills of South Dakota.

the Labor Banks and greatly increased deposits, stock purchases, etc., etc. He defends capitalism which I still believe in, well. I was interrupted at this point and must hurry more than I meant to. You give me joy by what you say of Stammmler — you must now have received a letter from me expressing similar views. I thought Wu's appendix the best thing in the book and excellent. I shall read to my wife what you say of Gertrude King. It will make her chuckle. I can't say that I made much of her essays, as I remember them. God forgive me if I acknowledged them with soap.

I have written to you how good I thought your essays, and my reservations as to political appointments here — although I always should be fearful of the effect of such considerations. I never have ventured to ask Taft what led him to make White C.J. I think that Hughes (whom I take it politics defeated) would have been fitter for the place. At the time I told McKenna, I believe, that he and I were the only two who didn't have booms going for us.

One of my interruptions was 10 essays by children of 13 on Saving the Ship Constitution, which I agreed to judge. I am now going to the post-office to return them with my adjudication, and shall post this hoping that it will go promptly. Beveridge called yesterday. He is taking infinite pains with his *Life of Lincoln*, and has the sound notion that what is wanted is not opinions but significant and authoritative details, so massed as to tell their own story. I expect some chapters to read, anon. My love to you both.

Affectionately yours, O. W. H.

16 Warwick Gardens, 13.VI.26

My dear Justice: I hope so much that you will both have a really restful summer. In a fortnight I, too, shall be on vacation, and though, on account of Diana's school, we can't leave London until August, the mere absence of the need to be at the School each day is a great prospect. I have much work to do; and a new course in Administrative Law to get ready for which I have many plans.

The last fortnight has been varied entertainment. I spent a week-end in the country with our research students, talking over their problems, an enjoyable time. They are interesting young folk, full of life and vigour. About half the young women seem to me better fitted for motherhood than for technical enquiries, but, possibly, the path they have chosen is one along which marriage is secretly discoverable. Then yesterday, McIlwain and I went down to Oxford and had a great time book-hunting all day. I can't say we made any epoch-making discoveries, though we seem to have spent eight or ten pounds between us; but we had that peculiar

thrill which comes from going into a room redolent with the faint mustiness of old calf and feeling that almost any volume may turn out a treasure. We lunched with some of the younger history dons, and it was amusing to find how well they played up to the theory of what an Oxford man ought to be. At least, to me, the contrast between McIlwain's fine and intense seriousness, and the Oxford man's air of avoiding the only subjects of which he knew anything made lunch something that only Charles Lamb could describe adequately. Then, also, I had a pleasant dinner with Birrell who is, at the moment, immersed in Swift and talked of him with so much charm that I was almost persuaded it was a matter of importance to make up one's mind whether Swift married Stella or not. Indeed so attractive did he make the problem of Swift that, after many years, I read Leslie Stephen's biography of him with real delight. Leslie is really the Prince of Biographers. He has no eagle-flights, but for essential sanity, calm common-sense and quiet humour I don't think he has his peer in English literature. Indeed, I think he is, in a different way, as good as any of the French masters; and I believe a case could be made out for my pet thesis that outside Bozzy his *Life of Fitzjames* is the most perfect biography in the language. Frida here interrupts me to say it is his *life of George Eliot*, which I agree ranks very high; and the only book I regard as nearly as good is Maitland's biography of Leslie himself. Of other things I have read the new translation of Spengler's *Decline of the West*. One can't help being interested, and impressed by the command of vast theories; but I see no reason to suppose that he has made of history an exact science. Most of his results seem to me to depend upon the introduction of unnecessary rigour into the time-problem and a plentiful supply of new and mystical terminology. But he is clearly a fellow built upon a big scale and to pose problems, even if one can't solve them, is itself evidence of a critical spirit. I read, too, an admirable book of essays on the *ancien régime* by Funck-Brentano. They give one an excellent picture of its machinery and have real humour. Did I, by the way, speak to you of Declareuil's *Histoire de droit français*? There's a truly admirable book which makes even Esmein and Brissaud look pretty thin by his side. He has got the flair for ideas that Maitland had and I read every word of him with interest. Eke he put me on to a hypothesis I propose to prove presently in detail:¹ That Bodin never propounded the theory of sovereignty associated with his name, that his ideas have no connection with Hobbes, consequently none with Bentham or Austin; that, on the contrary, Bodin is full of the idea of "fundamental" law which the sovereign cannot alter,

¹ Laski did not, apparently, fully develop this thesis in any published work. Cf. his *Rise of Liberalism* (1936) 32. See also his essay "The Tercentenary of Bossuet," 17 *Manchester Guardian Weekly* 254 (Sept. 30, 1927).

and that this is true of all the royalist jurists of France — Coquille, Lebreton,² Loyseau, etc.; that the theorist who really represents Austinism in France is Bossuet and that he took all his ideas over from Hobbes and gave them the proper theological unction. I hope this does not bore you. I am full of the notion that a careful re-writing of the history of French politics from 1610–1715 will altogether change our notions of the course of European thought. And here I must interpolate one other hobby. Have you ever read the novels of Samuel Richardson? If you have not, I hasten to insist that I do not ask you to begin; but if you have, why is it not true to say that the *fond* of Rousseau e.g. the *Nouvelle Héloïse* is in them; and, consequently, that the individualist strain in Rousseau is, so to say, the discovery in him of the Genevan Protestant as a result of discovering in the man whom all France was reading of ideas akin to his own. If ever I inherit two thousand pounds I shall certainly retire for two years into the country and write two volumes on these Frenchmen which, like the pamphlets of your friend Agassiz, will set eight men by the ears.³ It is a subject that one can't help getting excited about.

But this is my Hercules's vein. Let me end by being more mundane. Have you read a great detective story called *The Murder of Roger Ackroyd* by Agatha Christie. Do get it and read it with Mrs. Holmes in the evening. I defy you both, singly or jointly, to find the solution. Since *Trent's Last Case*, (the *Odyssey* in these epics) I know nothing in its class.

My love to you both.

Ever affectionately yours, H. J. L.

Washington, D. C., June 6, 1926

My dear Laski: This is an extra, slipped in between two storms, to say that I have read your two articles in the *Michigan Law Review* and *Harvard Law Review*¹ respectively, and think them both admirable. Of course I don't know the H. of L. decisions except by your report, but the attitude and general principle that you show has my sympathy and assent. One slight qualification. The political appointments here that I best recall have been good. I think Taft is all the better Chief Justice for having been President. Story, Taney and Chase were all good — and I might add one or two more. I don't know many as political appointments but I am ignorant. Also I think that Presidents, if there is a large preponderance of their own party on the bench try to get one of the [other] side — but it is not always easy.

² Cardin Le Bret (1558–1655); author of *Traité de la souveraineté du roi* (1632), the classic apology for Richelieu's government.

³ The anecdote referred to is not known to the editor.

¹ See, *supra*, p. 808.

The C.J. has telephoned to me that he does not expect to be present tomorrow, so I shall have a number of odd jobs on my hands as soon as I get some papers from him. It is the adjournment for the term and on Wednesday I hope to leave for the north.

Affectionately yours, O. W. Holmes

Beverly Farms, June 24, 1926

My dear Laski: One of your ever delightful letters came this morning. Your account of the Oxford dons avoiding their theme in contrast with McIlwain reminded me of how Bowen, when I tried to get him on serious subjects, dodged them with an anecdote. Following your order, I haven't read those biographies by Leslie Stephen. Perhaps I may this summer. I have obeyed your injunction and got Declareuil's *Histoire de droit français* from the Law School and begun it. So far it is preliminaries that I imperfectly understand without special maps and don't care much for, and forget, but *le bon temps viendra*, as old Fitzroy Kelly¹ said to my wife. I agree in your high valuation of Maitland's *Life of Leslie Stephen*. As to Spengler, I must have written when I was wrestling with volume I in German last summer. He stimulates with propositions that one doesn't believe when one understands them, but finds no less stimulating on that account. A new untruth is better than an old truth. As to Bodin's notion of sovereignty, he certainly states the proposition that the law-maker is superior to the law he makes — which doesn't seem to require much genius. If he believed, as McIlwain says the English did, in fundamental, unalterable law, I should guess that that was rather an unconscious assumption than a theory. I never read Richardson *in extenso*, nor the *Nouvelle Héloïse* at all. My wife won't read murder stories, but we should finish tonight *Hangman's House* by Donn Byrne. I don't see how it can end as well as it began, but the first half at least is superlative, if you like Irish stories. I told you last week of my best experiences in reading down here.

We motored round Rockport this morning and I thought of you. I saw no changes since last year. Probably not enough has been done yet to amount to anything, but I hate to see them cutting out and carrying off the granite. I feel (with less justification) as the author of *The Wheel of Wealth* says of England's selling coal — it is the workman selling his tools, or at least cutting out the foundations of his house. The automobile somewhat takes the wonder out of things by bringing them so near. In the days of horses this Cape would be full of remote mysteries that I might hope to pry into one by one. Now you can go round half the show

¹ Sir Fitzroy Kelly (1798–1880), lawyer, politician, and Lord Chief Baron of the Exchequer, 1866–1880.

in two hours. But the charm to me is too great for familiarity to blunt it. It goes back to my first impressions as a child.

This is a mean looking sheet to write on — I shall try to get something better in Beverly. But there is such comfort in a block. Frankfurter has written, and I hope to see him and his wife next week. I can't offer to put up a married couple in these days — we should have to give up our room and be at more bother than is reasonable for old people, but I am sorry. I dare say I forgot to mention that the Chief Justice, as the result of too much physical exercise, was kept in bed for the last week of the term. So I bossed the funeral. I have written to him, but it is too early for an answer. I hope and have little doubt that it was only a set-back requiring caution as he has to take care of his heart. I suppose all old people have to — (I am not including him in that category).

I have seen Beveridge — full of his work. The trouble that he will take to verify a detail is admirable, the more so that details don't master him. His idea is to mass them so as to make them tell the story without comment. I should be surprised if he didn't supersede all that has been written about Lincoln before.

Affly yours, O. W. H.

16 Warwick Gardens, 19.VI.26

My dear Justice: A delightful note¹ from you came yesterday. I am glad those papers of mine in the *Harvard* and *Michigan Reviews* won your approval. In general I don't myself mind an occasional political appointment; e.g. I am well content to believe that Taft (I hope he is better) is a good appointment. But one also has to remember the political judges at the time of the *Dred Scott* case and their disgraceful correspondence anent it with the executive power; and the habits of men like Ellenborough, Eldon and Kenyon give one furiously to think. A knowledge of affairs is, of course, invaluable, but one ought not to pay too heavy a price for it.

This has been a really peaceful week. The only engagement I have had was a party at the Russian embassy, where I had some good talk with one or two old friends. A reception there is a very amusing thing to see. The *hauteur* of a normal diplomatic affair is entirely absent. One sees many who would not appear in the *entourage* of the older embassies and many who are always at the latter never appear there. Our Foreign office always scrupulously sends a junior clerk, but the mighty most carefully absent themselves. The person there who interested me most was a Russian jurist with an unpronounceable name. He talked fluently eleven languages. The people I respect on the continent like Ehrlich and Duguit

¹ *Supra*, p. 848.

he recited on with great insight and common-sense. And he told me much that was illuminating and helpful about the working of the present legal system in Russia. It seems, if I followed him, to be a combination of executive justice and justice without law. In all political cases the problem rests entirely with the court, which means that, especially in matters like treason, the accused has very little chance. In smaller cases, the jury acts much more like a jury in medieval England in that it reproduces the atmosphere of trying a neighbour from personal knowledge. He himself was, I gathered, very opposed to the first, and well satisfied with the second. He told me that the new Russia has produced a remarkable literature about these things; but I had to take this for granted as it is not even translated into German.

The rest has been reading and a hunt round one or two of the big London shops with Charlie McIlwain. In the first, my main pleasure has been Fénelon whom I like. He has courage and imagination. Not, I hasten to add, the Fénelon of *Télémaque* who bores me stiff, but the Fénelon of the *Dialogues* and the *Memoirs* on practical affairs of his time. Acton showed, I think, singular insight in picking him out as one of the seminal influences of the 18th century. I read also a much-lauded German work — *Allgemeine Staatslehre* by Kelsen of Vienna. It is very clever in the sense of being an exquisitely reticulated system; but like most Hegelian structure, it seems to me entirely false to life. In a somewhat different field, I reread *Tom Jones* for the first time in years. It was really gorgeous — a great, human book that made one want to live in the same celestial block of flats with Fielding and talk things over with him. And, somewhat different again, I read Fontaine's *Mémoires* of Port-Royal — a most moving and exquisite account of its spiritual side by the most charming fellow of its second generation.

I must not forget (how could I forget) to tell you that since I wrote last I have met God. I was at a committee for the relief of the miners when Mrs. Besant turned up with the young man whom she announced as the new Redeemer.² I have never met a God before and it was a little embarrassing to talk to him. I did not like to mention the weather, as a comment on continuous rain seemed like an attack on his will. So I asked if he remembered any of his previous incarnations (he represents the Theosophists) and he told me thirty-three. He was a simple and unaffected creature who, I gather, has a gospel composed of a mixture between the Sermon on the Mount and the Veddas [*sic*]. What turned my stomach a little was the greasiness of his chief bishop who came with

² Mrs. Annie Besant (1847–1933), theosophist, had recently announced that Jiddu Krishnamurti, her *protégé*, was the new Messiah. Shortly thereafter Krishnamurti repudiated these claims.

him; . . . Gods, in my own view, should be more careful in the selection of their prophets. But I grow blasphemous.

I had a pleasant adventure in a café yesterday. I was having some morning coffee with my friend Siegfried Sassoon and we were having a heated argument about some modern men of letters. An old boy with a cloak, velvet jacket, flowing tie, and all the other appurtenances of the literary movement of the nineties sat near, listening with all his ears. Presently he came over, and in a booming voice asked to take part. We bowed and he made a long speech ending, "Sirs, I have not had such a happy hour since I first came here with Aubrey Beardsley, thirty years ago." The waiter told us he was an old journalist of the Wilde-Beardsley set who still was faithful to his haunt and, I dare say, peopled it still with the wan ghosts of memories.

In the bookshops I have found little save a copy of Gentillet's attack on Machiavelli and one or two trifles like Balzac's *Aristippe*. I must wait until I can get to Paris in August and have a real debauch. But I have bought from a German catalogue a complete set of Linguet's *Annales politiques* — about the most valuable of the 18th century French journals and I count it cheap in perfect condition at two pounds. And next Thursday as ever is, I bid on the finest set of Bentham you ever saw, finer than yours, or the one I gave away, or any conceivable other. I shall be restless until I know it is mine, and fearful lest it soar above my means. It is a set such as one rarely sees.

You I expect, are enjoying delicious sunshine. Here it is cold and wet, and the coal lock-out hangs over us like a dread spectre. Mr. Baldwin's new plans³ proclaim him a typical Pecksniff, who has given way to all the worst influences in the cabinet. I am afraid peace is far away.

Our love to you both.

Ever affectionately yours, H. J. L.

16 Warwick Gardens, 3.VII.26

My dear Justice: A letter from you this morning was refreshing beyond words. I have had a whole fortnight of sheer agony, examining students here, and in Oxford and Cambridge, for Ph.D. and D.Sc. degrees. It has meant reading about 5000 pages of typescript on about twelve entirely unrelated subjects, one of which only really appealed to me. Is there any worse ordeal in the world than a combination which involves boredom and a sense of duty? I have snatched at every diversion the time has afforded, but, but, it has been a heavy fortnight.

And you meanwhile driving around Rockport I envy you a little, for that coast got inside my heart and a summer there, not only for proximity

³ On June 15 Baldwin had announced the purpose of the government to take action to lengthen the working day in the coal mines.

to you, would I confess, be attractive. Instead, I am going with Frida and Diana to the Ardennes, thence for a little to Geneva, and ending up with a week of bookhunting in Paris. But that will not be for three weeks yet, for there are committees to attend and articles to be written.

Yet, as I say, I have had diversions. I went to All Souls for an examination and spent a night there — dinner on Sunday is, I gather, a great event and I can boast of having contradicted (very gently) an Archbishop. But he said that Montaigne was foul-minded and I count the provocation ample. Dons, I add, are a queer breed. Their conversation is either the interchange of inept and slightly malicious *personalia*, or gossip about the passing daily events such as a careful reader gets from the *Times* before breakfast. Or the state of the college cellar; or the probability that X will get a certain chair. I was not impressed, though I don't deny a certain mellowness in the atmosphere. Then a dinner with Haldane which was amusing as Bernard Shaw and Austen Chamberlain got on each other's nerves and the claws came out. The latter, I thought, gave the provocation by trying to be the Minister of State; whereupon Shaw, with incredibly brilliant insolence, began to prove that Foreign Secretaries are by definition cynical and corrupt. Poor Austen, of course, tried to riposte; but he was like an elephant trying to catch an extremely agile wasp. And what complicated matters quite gloriously was the presence of an old society dame of the Gladstonian epoch, who backed up Shaw by recounting the *amours* and infidelities of the Victorian foreign secretaries since her girlhood. Altogether an evening such as one rarely gets outside a French salon. I had also a pleasant dinner with Sankey, J. where I heard one piece of gossip that will interest you. Slessor, the late Solicitor-General, said the government would probably create two new law lords next September one of whom would be Leslie Scott. I hope that is true, for he has several times in recent years been passed over for men who have not a tithe of his ability. One law story I must not forget to tell you. You will have heard of Lyons, the famous caterers, who are a Jewish firm; and you may know (1) that the Coliseum is a music hall, and (2) that the Trocadero is Lyons most *chic* restaurant. Recently in a case before Darling, J. the Coliseum was mentioned. "Ah yes," said Darling, "the place in Rome where the Christians were fed to the lions." "Doubtless, my lord," said Counsel, "but the Coliseum I mean is near the Trocadero, where Lyons feed the Christians."

Of reading, there has not been time to do much; though I did thoroughly enjoy Höffding's *History of Modern Philosophy* — a Danish work the translation of which was given to me by a grateful student who got his degree a little unexpectedly. And a new volume of Rousseau's *Correspondence* was really interesting; there is a problem in that fellow that one can't help getting excited about. Also I read, for the first time in

many a year, Godwin's queer novel *Caleb Williams* and I think I rather liked it. And Croce's book on history¹ which, though disgustingly translated, and full of irritating Hegelisms is a work of real profundity. And by way of makeweight a very pleasant, ambling novel of Trollope's *The Way We Live Now*. He is like a good pack-horse, there is nothing specially attractive about him, but he always wears well. Certainly this, which has no special merits, could not be left until it was read.

I was very moved by your account of Beveridge. There is something fine and arresting about his tenacity, and I am sure that if he keeps his eloquence under control, he will do a valuable job. But the man I want to see tackled is Jefferson who, I observe, died a hundred years ago tomorrow. He is queer and big in a queer way; I wish I felt certain that I knew his secret.

I think, if I may say so, that you attach overmuch importance to Carver's book. For your Trade Commission has just published a most interesting account of American income² from which it appears that one percent of your population holds over sixty percent of the wealth, and the total value of employee holding of corporation stock is less than two percent of common and preferred. Moreover nothing of this touches the problem of control. I don't doubt that America will postpone longer than any other country the problems that come when one reaches the point of diminishing returns; but I don't doubt also that then your problems will be more serious, because of the degree to which your wealth is concentrated, than they have been elsewhere. I'm glad you are reading Declareuil which, I think, is about 3 times as good as Brissaud. I found myself last night quite enthralled by the latter half of the book, even to the point of checking up (and confirming) some of his references.

Did I write to you of my interview with Felix's Indian student? He turned up with letters and I invited him to dinner. I thought he wanted to talk law; but it turned out (1) that he wanted me to get him the post of Judge Advocate in India (2) to get a scholarship here for his brother (3) to recommend a treatment for his wife who suffers from constipation and (4) to get him appointed legal adviser to my father's firm in India. Very respectfully, I declined to do any of these things. He, with great firmness, persisted in his requests. I declined still more firmly. He rose and said with the air of Hamlet, "Then all the recommendations of Pound and Frankfurter are as froth or foam?" I gather that he visited McCardie, J. and after a ten minute interview asked for a testimonial. I told all this to Sankey who produced a letter from a Babu in Bengal beginning "Father of Merciful Justice" and ending "Hoping you will get me a soft job, I am your affectionate son."

¹ *History, Its Theory and Practice* (Ainslie, tr., 1921).

² *National Wealth and Income* (1926).

I must end by quoting you my poem which appears pseudonymously in one of the weeklies.

When Churchill came before the Judgment seat
No angel sought for mercy to entreat,
Silent they heard the sentence grim and dread
— To spend eternity with Birkenhead.

Our love as ever to you both. *Yours always affectionately, H. J. L.*

Beverly Farms, July 4, 1926

My dear Laski: If I could have a letter from you with no duty to answer except when I felt like it I should like to get one every day. Pretty often too, I want to write but not always. The languor of age I suppose makes one lazy. I have had various odds and ends of a business nature, including paying bills, that have taken time and energy. To draw a single check and dispatch it properly takes an appreciable moment. In one way and another Declareuil has had to wait. I am much tickled to note the Frenchman in him and am pleased for other reasons also to see him pronounce a hobby of the great Sohm pure imagination. Sohm was the fashion when I was younger and I even then thought that there were reserves to be made. His vogue led me to realize that there is fashion in ideas as well as in bonnets. Then Tawney's *Religion and the Rise of Capitalism* came along — the publishers said by his direction — and I have just finished that. A charming and handsome piece of work. I wrote to him this morning and said, as bound, after an appreciative word, that I was an old skeptic and thought capitalism better than anything likely to replace it but that I got more intellectual companionship from you young prophets than from the older orthodox sages. Now I have typewritten chapters of Beveridge's *Lincoln* to criticize — and at first reading I am afraid that I shall have to say that one, which must have cost much time, seems to me of questionable value to the story — but I must read the rest and then go back before I can speak.

I am delighted with your old fellow in the cafe with the reminiscences of Aubrey Beardsley. I think I once was told to call and called on Beardsley's sister, but I am not sure, it may have been merely an actress who recalled meetings with him, and the French woman who wrote queer stories and reviewed those of other people in the *Mercure de France* — *Rachilde*¹ — that was what she called herself. Her book notices were good stuff, as I remember. I have not derived bliss from my encounters with actresses. I remember going with John Gray to call on one — lament-

¹ Rachilde (Mme. Marguerite Vallette; 1862—), novelist and critic.

ing over the rest — and as we came away he said consolingly, well, she wasn't so *damned* respectable. Ellen Terry I thought insufferable.

I had a letter from Leslie Scott who seemed to think Baldwin was doing well.

Let this brief despatch count me one *As ever aff'ly yours, O. W. H.*

Beverly Farms, July 16, 1926

My dear Laski: An expected and appreciated letter comes today. Your account of the dons' conversation reminds me of Baliol [*sic*] in '66 when I was there with Edwin Palmer.¹ The dons spoke French after the school of Stratford atte Bowe and believed the formula that one Englishman could lick three Frenchmen. I probably have told you of Goldwin Smith² coming in at breakfast (I think) and saying, "I hear that Matthew Arnold is going to lecture on Celtic literature. I should like to know what Matt Arnold knows about Celtic literature." I read *Caleb Williams* when a boy — my father telling me it was the best novel he ever read, or to that effect. DeQuincey I think says that it was impossible to disclose in the finale the contents of the chest as no possible disclosure would be adequate. But all my memories are over half a century old. I can't believe that you really read all the books you mention. I don't doubt you read them as a good reader does, skipping by instinct, but I bet you didn't plod through every word of Declareuil as I am doing. I don't give much time to him, and for the first 300 pages, with some mitigations that I believe I have mentioned, I couldn't imagine why you had put me on to him. Now that I am in the Kingdom I begin to see, and although there still are details that I hardly pick enough long enough to forget, I am getting pleasure and instruction. I don't accept your comparison with Brissaud to the disadvantage of the latter. I couldn't recite on him, but I thought he brought the doctrines of private law into relation with life in a way that I never had seen equalled. So far, there is nothing of that here. Declareuil deals only with institutions. Some amusing explanations, *e.g.* the responsibility of ministers for the King, and a general impression going further than anything I knew before that England was a sort of provincial follower of French fashions in the origin of her institutions.

As to Carver's book, I can't control his facts. He pleased me because he thought as I do that the capitalist regime was better than the proposed substitutes and didn't believe in class war.

¹ Presumably Edwin Palmer (1824–1895), Fellow of Balliol, classicist and archdeacon of Oxford.

² Goldwin Smith (1823–1910), Cobdenite controversialist, who left Oxford for Cornell and Cornell for Toronto.

One of my few links with the living goes with the death of Miss Gertrude Bell — not that I had heard from her or seen her but once for I know not how many years — but there was a time when I knew her pretty well and got some remarkable letters from her. I sadly see Pepys drawing to his end — unfortunately I have nothing but a little cheap expurgated ten cents a volume edition here, but it is an ideal book for idle days. Some things that I had forgotten come up, especially in the use of words, such as mad for angry, which I should have supposed a modern Americanism. But there is always less modern than one thinks, as philosophers have observed since Solomon. I greet the budding laureate in you, as I do the historian in Beveridge. He is working along faithfully, and really wants criticism. When I said cut out a number of pages that had cost a lot of work, he argued his case but showed no vanity or anything but a wish to get it right — which I think creditable. He gets the Roosevelt Memorial Medal this year which I am glad of. I think there will be more trouble with his style than with his conception or his work.

Affly yours, O. W. H.

16 Warwick Gardens, 15.VII.26

My dear Justice: Very many thanks indeed for your letter — refreshing beyond words. I have had ten hectic days, a dash to Manchester to make a speech at the farewell dinner to the retiring Vice-Chancellor of the university; a lecture to 200 Americans at Toynbee; a lunch to other Americans sent to me by Mack and Felix; a dinner to some German lawyers; and three committees and two articles. It has been a ghastly sweat, and I shall be relieved indeed when next week comes and I can get away to Belgium. I look forward to that, for I shall sneak away to Paris for a week to hunt books, and later to Geneva for a couple of days to lecture to the university. But it is clear that so long as I stay here the burst of visitors will make life unlivable.

In the way of reading I haven't been able to do much. I read a very clever *Essay on the Origin of the House of Commons*, by one Pasquet; a new novel by Sinclair Lewis,¹ which I thought poor; a lecture by Keynes on *laissez-faire*² which was meritorious without being extraordinary; and a very good book by Norman Angell called *Must Britain Travel the Moscow Road?*³ — an answer to Trotsky's lucubrations done, I thought, with great effectiveness. And I reread Plato's *Republic* in order to examine on a thesis. Not exactly idleness, but still reading that has been a little aimless in character.

I have bought one or two things though. The best, undoubtedly, is

¹ *Mantrap* (1926).

² *The End of Laissez-Faire* (1926).

Le Bret, *La souveraineté du roi*, which was Mansfield's own copy, and though I doubt whether he ever read it, I like to think that he owned it. Also I got Baildon's *Cases in the Star Chamber* of which he printed only two hundred copies. And on a barrow in the Caledonian market I picked up a first edition of the *Lettres provinciales* in perfection as to state for sixpence and sold it to Quaritch for ten pounds. So I go to Paris with a good conscience. Did I, by the way, tell you that my graduate students presented me with the 1557 folio of Sir T. More's *Works*. Ten of them this year got their doctorates, by way of being a record for one teacher in one year; and this was their very charming salute in passing.

One or two people who have happened in would have pleased you. Notestein,³ who is professor at Cornell, is a charming fellow, learned and light-hearted. I have told him to send you a clever paper of his on how the House of Commons won the initiative in legislation. Rosenthal,⁴ a lawyer from Chicago, whom Mack sent, seemed to me most able, and he gave me a lunch that in conception and execution was an epic. He was enthusiastic, by the way, about a federal judge named Sanborn,⁵ whom I do not know. Could you recite on him? And I liked much an economist from Columbia named (I think) Brightbrown⁶ (or the other way about). He came from Felix, and like all the latter's envoys, could talk the humanities as well as economics. But one man was deadly. He came from Peoria and announced (I) that New York was Babylon (II) that prohibition was sanctioned by the New Testament (III) that America led the world because she was singled out by God to set an example to King-ridden Europe and (IV) that the night-side of London made him tremble for the virtue of his sons. I asked, humbly, if it was necessary for him to investigate it; he said he made a point of it wherever he went in order to emphasise the virtues of Peoria to the "folks back home." I asked if he had read *Gentlemen Prefer Blondes*, but as he had not, the allusion went for nothing. My God, what a man! He would not buy an evening paper because it contained the racing results.

I am sorry to hear your scepticisms anent Beveridge's *Lincoln*. I take

³ Wallace Notestein (1878–), Professor of English History, Cornell University, 1920–1928; Sterling Professor of English History at Yale, 1928–1947. The paper referred to, "The Winning of the Initiative by the House of Commons," was the Raleigh Lecture on History for 1924 and is printed in *11 Proceedings of the British Academy* 125 (n.d.).

⁴ Lessing Rosenthal (1868–1949), public-spirited practitioner in Chicago.

⁵ Presumably Walter Henry Sanborn (1845–1928), United States Circuit Judge in the 8th Circuit, 1892–1928, who wrote important decisions in anti-trust cases, and administered a number of important receiverships.

⁶ Presumably James C. Bonbright (1891–); coauthor, with Gardiner C. Means, of *The Holding Company* (1932) and of *The Valuation of Property* (1937).

it that he lacks conciseness and sacrifices the perspective to the love of trifling detail. I met here the other day a man who had worked out that George Washington had connections in 52 places in England, and was going to visit them all. B. I fear has something of that temper. I always felt that his *Marshall* could be cut down by a third without essential loss. I wish I could have seen you presiding over the Court; sorry though I am for the cause. Hewart, C.J. told me the other day that a Welshman who spoke not English described him to the interpreter as the "old bloke in the red bedgown"; at least you are free from that.

Our love warmly to you both. I hear Chafee has just arrived here. I look forward to seeing him.

Ever affectionately yours, H. J. L.

Beverly Farms, July 29, 1926

My dear Laski: Your latest calls for two or three counter memos. 1) I saw Trotsky's book at the Athenaeum when by exception I went to Boston to try on some clothes — wondered if I ought to read it, but noticing that it was written more than a year ago thought it could wait. I am glad to know that he has been answered, and will let the two books cancel each other. 2) But I haste to correct a seeming impression that I am sceptical about Beveridge's *Lincoln*. I confidently believe that he will write the final life. I forget what I said, but it cannot have been more than that I wanted him to cut out some pages that I thought irrelevant, and thought that he possibly had been getting too high an opinion of the South before the war (our war). 3) Sanborn is a distinguishable Circuit Judge. I think I heard when I came on to the Bench that he had his name before the White House as a candidate for a place. I should think he was as good as some that have been promoted, but I should be inclined to speak as did the King in the ballad of Chevy Chase when he heard of Percy's death.¹

Now for my turn. Thrice accursed man, why did you put me onto *Declareuil*? He does his work well I don't doubt, but out of his damned 1061 pages, all read by me, not more than 100 have anything that I want (the account of the development of French law and the relation to it of the Roman and Frankish law). His decent but universal denial of anything that any German ever said gives me pleasure, but I do not understand your great enthusiasm. I should as soon get hot in praise of the Almanac. However, since then I have turned off some *certioraris* against next term, and incidentally have tucked in Pepys and some small

¹ The words were those of King Harry when news of Percy's death reached London:

"'T've a hundred captains in England,' he said,
'As good as ever was he.'"

matters and now am happily at leisure. Miss Sergeant indicated the possibility of calling here this afternoon but as it is rainy and she is in Brookline I doubt. Whether her calls have an ulterior motive in a notion that she once entertained of writing about me I know not, but I believe I told her that I didn't see that there was anything to say for a writer not in the law. My wildest excursion was to Gloucester last night to hear a master play on the carillon of Our Lady of Good Voyages — a Portugese church. It moved me, though somewhat impaired by the interjection of Three Blind Mice and the like. I have seen Bob Barlow and Palfrey — but know no personalities that would interest you. I turn from Declareuil to *Nize Baby*, Dryden's *Dramatic Essays*, Dorothy Osborne's *Letters to Sir William Temple*, and Frankfurter's admirable article, which I shall finish as soon as I have signed this. It is on Petty Federal Offenses and the Constitutional Guaranty of Trial by Jury.² I envy you your trip which I hope has come off satisfactorily. I envy also the *Provinciales* which I wouldn't have sold — yet I dare say you were right.

Affectionately yours, O. W. Holmes

16 Warwick Gardens, 25.VII.26

My dear Justice: I have packed a good deal into the ten days since I last wrote, including a dose of septic tonsillitis, which kept me in bed for six days. However, I am about again and quite fit, and I got a good deal of pleasant reading done. First I reread with great joy all of Jane Austen, who is really an ideal bed companion. I stick to *Pride and Prejudice* as the best of them all, though I do not deny the immense art of *Emma*. I amused myself by trying to discover in Jane some semblance of interest in contemporary events, but I can only discover four faint references that suggest that the political scene was ever before her mind. What pained me was to note that in most of the novels I usually prefer the rejected suitor to the accepted *e.g.* in *Mansfield Park* I greatly dislike Edmund, and do like Henry Crawford, and I prefer his sister to Fanny Price who seems to me a quite intolerable prig who was quite obviously destined by nature to be an old maid and keep a pug. Of other things I read with real enjoyment Scherer's *Life of Grimm* — a wholly delightful book, full of insight and delicacy; unfair to Rousseau, but that because the new evidence was not then available. Then I read a good book by one Cru (an American of whom I know nothing) on Diderot and English influence of Shaftesbury in the 18th century. Did you ever read the *Characteristics*? I have tried twice and each time failed pretty completely. Did you ever try, and if you did, were you impressed? Then

² Frankfurter and Corcoran, "Petty Federal Offenses and the Constitutional Guaranty of Trial by Jury," 39 *Harv. L. Rev.* 917 (June 1926).

I re-read Leslie Stephen's *English Utilitarians*, a greater book the more one reads it. It is wonderful to be in touch with his common sense, his poise, his fairness, and his sly humour. I don't really think he has a rival among English critics. He hasn't the sudden and unexpected genius of Coleridge, or the level of brilliance of Hazlitt, but he has a width of mind, and an easy charm in learning that neither of them could approach. I thoroughly enjoyed, too, McTaggart's *Hegelian Cosmology* which, if you have it at hand, would, I think, give you real pleasure. The essays especially on sin, punishment, and society as an organism, are really first-rate. And I greatly enjoyed also (have I spoken of it to you before?) Höffding's *History of Modern Philosophy*. I don't know if you have read it. No other book I know is nearly so good for the purpose of discovering the sweep of the subject.

But a truce to reading. I had one book-hunt with my friend Professor Neale of Manchester which was really exhilarating. First of all we discovered a quite new shop (in Hammersmith) and second, the man did not know the first thing about the books he was selling — a combination, you will admit, that is as near the ideal as can be. We spent the morning on the top of ladders, perilously swinging in mid-air. But the fruits of danger, my dear Justice, were worth the risk. I got for sixpence a volume three of a Jurieu of which by the luck of heaven I had the previous two. For three shillings each I got two *Recueil* of the early French 17th century which are as rare as they are desirable — and neither of them is in the British Museum. For ten shillings I got the Aldine Tacitus in a contemporary morocco binding — as delectable a copy as you ever saw; and for 7/6 I got Edward's *Gangraena*, the three parts complete, the usual price for which runs up to seven or even eight pounds. And one other book adventure I must record. There is an old bookseller here called Harding. I go to him a good deal to chat, though, as a rule, his prices soar beyond me. He is a good fellow, who lost a son in the war and another later and carries on the business now rather for occupation than need. When I went to see him the other day, he shyly asked me if I would accept a book from him as a word of thanks for pleasant company and to my gratified amazement presented me with a copy of Baildon's *Cases in the Star Chamber* of which only two hundred copies were printed with a most charming inscription. I was, as you can imagine, really touched; and when I thanked the old man and suggested that we go out for a cup of tea, the tears stood in his eyes. "That's the thing," he said, "you treat me as a human being; most of my customers look on me as a machine for finding books for them."

We have had one or two pleasant dinners here. One, for Croly, produced some of the best talk I have had in many a day. The more I see of Croly, the more I respect him. He is so simple, so humble, and so

absolutely fair in his judgments. The other was for a group of American historians among whom you would know McIlwain. But there was one from Cornell, Notestein, who was simply charming; and I have asked him to call on you if he ever gets to Washington. He will send you a paper of his on how the House of Commons won its legislative initiative in the 17th century which you will, I think, find most delectable. I also had a most amusing lunch with Glenn Frank,¹ the new President of Wisconsin University. He is, I should guess, what Felix calls a faker — really charming *au fond*, but terrified of not being thought the real intellectual, with the result that statements such as "London is full of Americans just now" are made with a grim tensivity such as might be used in announcing the discovery of the law of gravitation. He was most anxious to go to the King's garden party, so I wangled an invitation for him. It was most amusing to see him take the most infinite pains over the right clothes, even to the purchase of a white top-hat and white spats, which I dared him to wear in Wisconsin, I saw Archie Coolidge for a moment and he told me the extraordinary fact that a colleague of his has joined the Benedictines.² He was working at Polish history and was thus converted. The ways of God's mercy are infinite. Polish history would send me to a sanitarium.

We leave England on Wednesday for a month at Walsort-sur-Meuse, a little place tucked away in the Ardennes, about twenty miles from Dinant. I go on the 8th to Paris, to spend four days with Neale book-hunting; and on the 19th I go to Geneva for two days to lecture. But otherwise I shall have a complete holiday, writing in the mornings and playing for the rest of the time.

Our love to you both. I hope the heat wave of which I read has not troubled you.

Ever affectionately yours, H. J. L.

Beverly Farms, August 5, 1926

My dear Laski: Pleasures are ultimates and in cases of difference between oneself and another there is nothing to do except in unimportant matters to think ill of him and in important ones to kill him. Until you have remade the world I can class as important only those that have an

¹ Glenn Frank (1887-1940), journalist who in 1925 had gone from the editorship of the *Century* to the presidency of the University of Wisconsin, where he remained in office until 1937.

² Robert Howard Lord (1885-) had taught history at Harvard from 1910 to 1926 and, becoming a convert to the Roman Catholic Church, studied for the priesthood, to which he was admitted in 1929. Besides being the author of a number of works on Polish history, he was coauthor, with Harold J. Coolidge, of *Archibald Cary Coolidge: Life and Letters* (1932).

international sanction in war. Therefore I pass without further remark your raptures over Jane Austen (well enough if you don't make too much row about her). She shines in the firmament of your world — along with Declareuil. You are God of that, but the religion of taste is polytheistic.

I wonder whether McTaggart's Hegelian book is one that Haldane recommended to me when we crossed together and that I purchased and read with much pleasure. I can't remember definitely. As to Shaftesbury, I can't say whether it was his *Characteristics* or somewhat else of his that I read in times past. As the *Characteristics* have stared me in the face for years I am pretty sure it was they (them) — anyhow I remember spotting modern [vistas?] and thinking that I saw a man ahead of his time. Höfding perhaps I will send for.

I have been browsing and idling for a few days. G. Moore turned me to Synge's *Well of the Saints* and I can't say how much I admired the genius of that play. The Irish more than any others have the poet's gift of uttering the unutterable, I think. I read *Twelfth Night* to see if a little girl was right in thinking S. long in coming to the point. Some twaddle, some unintelligibilities, the treatment of Malvolio brutal and tiresome, but as always a precious jewel in the head of the toad. I have spent two days in rereading *The Moonstone*, and still found it absorbing. Yet it has no other merit that I can see, except the *coup de théâtre* at the end where the three men part for their pilgrimage and the moonstone shines once more from the forehead of the idol. That does truly tickle my melodramatic soul. I read in Everyman's, Dryden's *Dramatic Essays*, i.e., his prefaces, with much pleasure and some surprise. It made me feel that there were some who twigged Shakespeare from his own time. Also he is more than a razor — he is a sting and says poignant things. But as you see I am not deeply engaged. When I read a book I read every word — a bad sign — and so am slow to tackle a new one. I hope you are having a happy vacation.

Affly yours, O. W. H.

Walsort-sur-Meuse, 4.VIII.26

My dear Justice: The postcard I enclose will give you some idea of the country-side here; it is really beautiful beyond words. As I write, I look down straight on to the Meuse, which is surrounded to a height of eight hundred feet by gaunt, grey rocks, half-covered by green firs. And for miles round its banks are dotted by small chateaux like the one you see on the postcard. This particular one dates from 1620, and is itself the transformation of an eleventh century abbey. It's a magnificent piece of architecture for all its smallness; the proportions are exquisite, and the glass in the windows has that peculiar half-purple tinge one finds

in old buildings. The rooms inside are not exciting. The furniture is mainly the dull gold of Louis XIV, which always seems to me pompous and artificial, and the pictures, in general, are the fake pastorals of the Boucher period. But there is one Watteau landscape that is like a page straight out of fairyland. We are enjoying ourselves hugely, and it is a perfect rest. I write all morning, and in the early afternoon; then we walk after tea and again after supper. The place is small enough to make evasion of formality possible with all the comforts that represent civilisation. One or two social observations will, I think, interest you. Practically all the local peasantry are profoundly Catholic, and so far as the countryside extends, the deputies in the chamber are Catholic. But as soon as you move to the outskirts even of a small industrial town like Dinant, the church is a dead force and the deputies become socialist. It is interesting, too, that in the different hotels roundabout the headwaiters, who have mostly originated from the place, are all eager agnostics, anxious to explain to you that as soon as they got into the larger world outside, they saw that the church was an incubus. The politeness of everyone is almost excessive, and I incline to the view that the peculiar virtue of French is that it enables you to say nothing more formidably than any other language I know. One other thing has struck me forcibly. A large number of Dutch people come here, and, taken as a whole, they are the finest race of trenchermen I have ever seen. They breakfast solidly at 9, meaning every dish of it; at eleven you see them at coffee and bread and cheese; at one they are at the table with their napkins tucked in their necks, ready for siege operations; at four tea and cakes; at six-thirty a drink in anticipation of dinner; at seven they dine over five courses, missing nothing, and evading talk as an interruption of serious business; then at 10:30 they have tea and cakes in preparation for bed. One visitor here is a Dutch professor of history with whom I have had some talk. The other day I approached him while at dinner with a question, only to be met with the stern remark that he never spoke at meals! I must add that life among a small nation is most interesting. Their sense of national feeling is much more intense than in a great country like America or England. A writer of local reputation assumes the proportions of a world-figure. The Dutch historian was shocked beyond words that I did not know of a Dutch dramatist whose name, I think, was Wondel.¹ Surely I knew his *Lucifer*. I asked if he had been translated into English or German. No; I did not know Dutch. Ah! but he is the first dramatist of our time. I hinted gently that a word might be said for Shaw. This was waved gently aside. Shaw, of course,

¹ Joost van den Vondel (1587-1679), poet, translator, and dramatist; his play *Lucifer* (1654) was translated into English in 1898.

was a big man, but Wondel. — So an historian who had written a history of Java was pointed out to me with the same solemnity and reverence as I might show in asking you to notice Gibbon on the other side of the street.

I feel a quite different person since we've been here, fit and rested, and very happy in being at work. So far, I have got my inaugural lecture roughly done, a plea for the historical study of politics on the ground that one cannot get the perspective of one's ideas in any other way. Of reading I have done but little that would interest you, I fear; mainly communist pamphlets which have been chiefly noise, except one or two by Lenin and Trotsky, in which one detects at once the hand of the really big man. Also Anatole France's *Bergeret at Paris* which, apart from the *Dieux ont soif*, I like the best of all his books. On Sunday I go to Paris for four days book-hunting, and I look forward to that immensely. I have one or two new addresses, and as the day comes nearer my heart panteth after the quays, as the hart after the brooks.

And I must not forget to tell you that on the way here Frida and I celebrated the fifteenth anniversary of our wedding-day by buying ourselves two etchings by James Ensor, whose work I expect you know. One of them is the cathedral at Antwerp — a large one (12 x 8) with the square in front alive with a crowd, and as you look closely, you see that about every person in it is doing some little task with a gesture or an expression that gives them life. The other is a study of the quay at Ostend, and is a delicate piece of witchery rather in the manner of Whistler. The man we got them from had a collection of Ostades that made my mouth water, as also one of Rembrandt's which was in finer condition than any I have seen at a dealer's. But this last was not for sale as the town has bought it. While in Antwerp I stopped again to look at the Plantin Museum and sat on the chair where Justus Lipsius² used to correct his proofs, and saw the letter to him from Casaubon regretting L's conversion to Rome.

I like most all that you write of Beveridge's attitude to his book, for I imagine he is pretty sensitive to criticism; those ebullient people usually are. I wish it had been Jefferson or Taney, C.J.; they are the people about whom I want to read a really first-rate book. By the way, and without connection, I must not forget to say that we dined on two successive nights before we left with Shaw and Haldane, each celebrating his 70th birthday.

Our love to you both.

Ever affectionately yours, H. J. L.

² Justus Lipsius (1547-1606), Belgian Latinist best known for his edition of Tacitus. His early fluctuations in faith came to an end in 1590 when he returned, forgiven, to the Catholic Church.

Beverly Farms, August 20, 1926

Shall I direct to you as Professor or Esquire?

My dear Laski: Your account of the Dutch trencherman delighted me — and what you say about small places. Did you ever read *Little Pedlington*? If not, do make a note of it. It is what my father used to call a seed book. The Vondel you mention, the author of *Lucifer*, which was supposed to have given Milton hints for *Paradise Lost*, suggested Wendel so far that my father bought his portrait. I have it, it is engraved by Janus Lutma who in turn (or his father — I think himself) was etched by Rembrandt, you may remember the etching, a third state hangs in my dressing room. Vondel is called *Olor Batavus*. I think I also have his works! Ensor I know only by name — if by that. A few of Ostade's etchings I love. I have poor states of those that I like, but many I don't care for.

Well, I have finished Höffding, and thank you as much for recommending that as I damned you for putting me on to Declareuil. The book is already a little old, but really excellent, and his brief criticisms are pungent. He has the best short account of Kant that I remember. Eminent persons who have counted and have disappeared I (unlike you) forget as fast as I read about them, but I get the movement. One thing that bothers them all, I suppose from theological presuppositions, strikes me as twaddle — the "problem of evil." Of course the universe is a mystery — and its manifestation of life in seemingly isolated fractions — but, given that, evil is simply death — the end of a transitory manifestation. The withering of a leaf, the sickness of man, the struggle for life, all are normal sequences of the datum — as are frauds and murders. The philosophers seem to me to put their mystery in the wrong place, as spiritualists and Catholics do their miracles. I consider the above remark good, and with that and the end of Höffding propose to pass to lighter themes. I mean to begin by sampling Guedalla's two books which lie upon my table — *Fathers of the Revolution* and *The Second Empire*. If they amuse me enough not to count the pages I may read them. I notice that Höffding refers to *Memories of Old Friends* from the Journal of Caroline Fox (Tauchnitz) which sounds as if it might be interesting. I may send for it. (Of the Mill-Carlyle period, converse of eminent persons, noted rightly by the journalist.) To one who reads every word articulately, as I do, it is a more serious job to tackle these histories, etc. than to you who read down the page instead of across. I suppose I could drool along over other sheets, but I drive out in a few moments and as it is possible that by stopping now I catch tomorrow's (?) boat, I stop — anticipating your next adventure.

Affectionately yours, O. W. Holmes

Walsort-sur-Meuse, Belgium, 14.VIII.26

My dear Justice: I came back yesterday from Paris to find your delightful letter.¹ My conscience pricks me about Declareuil; I plead only in mitigation of sentence (1) that I really enjoyed it (2) that McIlwain and Haskins share my view that it is a first-rate piece of work. But you will note that I begin with a confession of guilt. And, after all, you have been comforted by Pepys. Do you find pleasure in Horace Walpole? I remark that I ask a question and do not make a recommendation!

My friend Neale and I combed the bookshops in Paris for five days with infinite joy. We went to see two pictures (Vermeers) and did a theatre (*Cyrano de Bergerac*); and we dined with Alvord the American historian² very pleasantly. But otherwise it was grim hunting. The *Quais* yielded a little; but they have now little that is old except theology and even a pleasant 17th century binding cannot reconcile me to sermons. We had talks with some of the old *bouquinistes* there, one of whom had a hobby of collecting incunabula, and, to my virgin ignorance, talked of them well. One had been a great friend of Renan and told me with huge malice of his contempt for priests. But, in general, they are a decaying race and the trash, especially pornographic trash, they display, is abominable. But inside some of the shops was very different. I got some sixty things I badly wanted — names like Jurieu, Linguet, Coyer,³ will explain the line of country over which I travelled. You know the exquisite feeling of being in mid-air on a ladder with the prospect of infinite treasures above your head. For the most part I eschewed modernities, except for an occasional out of the way thesis. I was proud of what I got, but the joy was in the hunter's zest and in talk with the booksellers. One, Gougy, had a shop which A. France used often to frequent, and I spoke to him of France's knowledge of books; "pretty fair," he said, "but" (with immense pity) "he did not know that the 1590 (?) Montaigne had a blank half-title." Champion was a delight to talk to, for he is a real scholar whose own books are of high quality.⁴ He is very impressed by the young American students who come to Paris — their interest in work and their determination. He also told me that his father was bookseller to J. R. Lowell and that the latter once

¹ *Supra*, p. 859.

² Clarence Walworth Alvord (1868–1928), historian of the Illinois Territory who was Professor of History at the Universities of Illinois and Minnesota.

³ Gabriel François Coyer (1707–1782); friend of the men of letters of his time and almost a man of letters in his own right; author, *inter alia*, of *Bagatelles morales* (1754) and *La noblesse commerçante* (1770).

⁴ Pierre Champion (1880–), editor and scholar, was the son of the well-known bibliophile Honoré Champion (1846–1913) and was the author of historical and biographical studies.

refused to buy a first edition of Molière for 200 francs because it was too expensive. You can imagine that they were full days. I add that I was glad to be back here; for the peace of this place after the noise of Paris is attractive beyond words.

I have, of course, read little since I wrote last week. But I must mention, because I liked it so much, Anatole France's *Sur la pierre blanche*. You may not know it, tho' I expect you do; if not, I conjure you to read it, if only for the simply exquisite *conte* of S. Paul and the Roman consul. You may doubt the philosophy at the end, but you will not fail to yield to the pure magic of the style. I had also to read (dolorous job) a book by an Indian on comparative administrative law to review it, and I thought it pretty poor. These Indians will seek to write in the grand manner, with the result that they irritate one's sense of words beyond endurance. On one page I counted 74 nouns with adjectives and thirteen without; on another 36 had two adjectives and only 18 one. What gain he hoped thereby to win in heaven I know not. The one other thing I read was the *Christmas Carol* with Diana and I don't know which of us loved it most. Dickens certainly had the gift of tears; and why the impossible conversion of Scrooge should make one's eyes wet at the twentieth reading when one knows exactly what is to come I don't know one bit; but there it is. A good letter in the *New Statesman* the other day pointed out that Dickens probably did more than anyone in his generation to make men see the commonsense of Bentham, and I imagine that is true. Who wouldn't be a law reformer after reading *Bleak House*? or in favour of school inspection after Mr. Squeers, or factory laws after *Hard Times*. The world belongs to those who know how to tell a story well; and it is only after them that the poets come in influence.

By the way I want you to tell me if you know of a Dutch poet named Vondel? (Have I asked you this?) I found no one in France to bear testimony to him and the Dutch here swear by him.

But I must pack; for tonight I go to Geneva and until next Saturday I shall have no peace.

Our love to you both,

Ever affectionately yours, H. J. L.

Beverly Farms, August 27, 1926

My dear Laski: You renew my job by another letter from Waulsort sur Meuse, the precise place of which on the map I know not. I readily accept the judgment that Declareuil's work is first rate. My howl was only because the greater part of it concerned facts that I am not studying and forget at once. You ask in connection with Pepys whether I find pleasure in Horace Walpole. I should be surprised if I hadn't writ-

ten or said that Pepys and Walpole were the two books that would occur to me first when I didn't want to be bothered with ideas and yet didn't want to waste my time. Not that I have read more than a volume or two of Walpole — but I wish I had him here now. . . . Your account of your Paris experience makes me feel envious and old. I have little to tell of myself — I think I mentioned reading Guedalla's two books, *Fathers of the Revolution* and *Second Empire* — the latter much the fitter subject for his pen. Since then only a mystery tale — by E. Wallace: *A King by Night* — good of its sort. I hung over it for a day.

Yesterday my leisure between driving, etc. was taken up with an article that my dear Wu sent me from China.¹ I wrote three opinion-size pages to explain why I didn't think it a source of new light — but one hates to do that kind of thing to one who commands all one's affection and esteem. I told him that I thought his studies in Germany had affected him a little with their own systematizing habit, that Kant's and Hegel's systems had gone into the waste paper basket and that they would have done better if they had confined themselves to their profound *aperçus*. Their systems, *pace* Haldane, have burdened and bored the world to get rid of them. Now for a few odd moments I have taken up to read a third time Lethaby's admirable little book on Architecture in the Home University Library. If I can find another story I shall read it — but I think it just as well to idle a bit. The other day I went again around your adorable Rockport, stopping to look at the house built wholly of newspapers that I must have told you of last year. The papers are glued together into boards, and now chairs, tables, etc. adorn, also made of newspapers rolled into tubes. I believe the man, whom I didn't see this year, is an expert electrician — building this house was his amusement. . . .

Affectionately yours, O. W. Holmes

As From 16 Warwick Gardens, 22.VIII.26

My dear Justice: I came back from two thrilling days in Geneva¹ to find your letter. Of course I accept your polytheism, adding that I would not embark upon persecution even for the sake of Jane Austen. I ask

¹ Probably "Scientific Method in Judicial Process," 3 *China Law Review* 7 (July 1926), reprinted in Wu, *Judicial Essays and Studies* (1933) 26. Holmes's letter to Wu concerning the article is printed in *Justice Oliver Wendell Holmes, His Book Notices and Uncollected Papers and Letters* (Shriver, ed., 1936), 186.

¹ In Geneva Laski had delivered an address, "International Government and National Sovereignty," before the Geneva Institute of International Relations. It is printed in *The Problem of Peace* (1927) 288.

you to note my moderation, for men have oppressed in much worse causes.

I had never been to Geneva before. The city itself, to begin with, is quite lovely. The vast lake, the sun-flushed mountains, the peak of Mont-Blanc with the snow crowning its summit are not easily forgotten. To look over the bay by moonlight is one of the memories to be cherished. Then the old houses are attractive. And in the town library I read Rousseau's *Confessions* in the original manuscript and letters to him from D'Alembert, Diderot, Hume, all, of course, known, but all, with their faded splendour, giving one the sense that one had suddenly become a contemporary of them and that if one went outside into the sunlight, Montesquieu, maybe, would be just around the corner.

To this must be added the pleasure of finding what was, from my point of view, the best bookshop I have ever entered. Even now I tremble to think what I might have missed had I not gone. Original editions of Rousseau, Jurieu, contemporary criticisms of them, answer to Montesquieu (still uncut) *circa* 1748–50, all at a price that rarely averaged more than a dollar, and was frequently less. I spent, I think, five pounds; and I must, I think, have bought seventy things all of which are undiscoverable in England, and long sought for by me with sighs of longing. The hunt in that musty room with my heap of discoveries growing bigger and bigger as the hours went by is unforgettable. Next year I must certainly visit Lausanne and Basle. These Swiss places, through, I suppose, the Calvinist tradition, have accumulated the kind of literature I want in a size I have never yet experienced.

The League itself was not especially impressive. I saw some old American friends — Manley Hudson, Herbert Feis,² Raymond Fosdick;³ and I met James Brown Scott⁴ who, I whisper quietly, did not seem to be a great man. I met also Zimmern, but he is now a crusader for the League and nothing but the League and to a sceptic that does not help discussion. The place itself, as the centre of the League, has become the most amazing medley of nationalities; and one finds oneself continually searching for an interpreter to find out what some Czech or Pole is trying to say. On the other hand the International Labour office *does* impress. One has the sense that fertile thinking is on foot and that really effective work is being done. The real genius of the place is an Irishman

² Herbert Feis (1893–), economist and public servant, was associated for many years with the International Labor Office of the League of Nations.

³ Raymond Blaine Fosdick (1878–), lawyer, man of affairs, and authority on police administration.

⁴ James Brown Scott (1866–1943), energetic administrator of, and prolific writer on international law.

named Phelan,⁵ who has a good deal of Felix's quick, nervous charm. He has a power of speculation that kept me up till four one morning and a hatred of organised religion that gave me immense pleasure. This last conversation was a kind of round table fight over what the Russian Communists would call theses — Phelan and I against Fosdick and an American bishop whose name I do not remember. We argued that no religion can be certainly established and that the mere beauty of its profession does not entitle us to claim any other sanction for it than the inherent appeal of that beauty. The bishop wanted to force people to believe as the only way of saving the world from anarchy. He was the mildest persecutor I ever met, but grimly certain that the world was lost, and unwilling to see any virtue in the power of reason. We met there also a Bolshevik from Moscow who was just like a medieval inquisitor. His calm certainty that Marxism was an ultimate truth and that one could go to *Das Kapital* as one goes to the Bible when a Christian, made Phelan say that for Communists Marx was the incarnation and Lenin the second coming — a remark that combines the charms of truth and blasphemy.

I came back last night to our last week here. We go next Friday to Antwerp for two days and then home. This really is an interim letter, for I have two weeks' English correspondence to answer and I am writing to you as a relief to my irritation over business letters.

Our love to you both.

Ever affectionately yours, H. J. L.

Beverly Farms, September 3, 1926

My dear Laski: Your account of Geneva and your book adventures there move my envy — but I too have had my adventures, although on a less impressive scale, both external and literary. One Wednesday, two days ago, we went to Plum Island and sat upon the white beach, longer than the old Hoffman House bar, stretching out of sight, with the black-blue ocean illimitably in front, and a few mackerel gulls zigzagging swiftly overhead — infinite space and air. Then returning we stopped at the old house that you will remember in Newburyport, which was hard by, and renewed the old sensation of the yard thick walls, and the daughter of the house, now its mistress, came out (as there were a lot of girls inside whom we didn't want to disturb) and made me proud of the old Yankee race — though I horrified her by saying that I believed in

⁵ Edward Joseph Phelan (1888–), British economist of Irish birth; after many years with the International Labor Office, he became its Director General in 1946; author, *inter alia*, of *The British Commonwealth and the League of Nations* (1931).

"My country right or wrong." Yesterday we went to a noble old house in Marblehead of which I spare you the description but found there an elderly Marblehead woman in charge who again made me proud of the Yankees. Returning I found a woman with proofs of a photograph that I weakly let them take the other day. I expounded that it was not my job, but my wife liked the photographs so well that she let me in for \$74 before the short seance ended. This p.m. we have been at the studio [of] Kraska [*sic*]¹ in Gloucester to see a model he has made for a companion piece to the fisherman that stands at the head of Gloucester harbor of which probably I wrote to you last year. This is of the Gloucester woman and again moved me. Also I liked the man. He said he came from England (Norfolk).

In the way of reading, not much, but impressing. I've read, in a translation, not having the French, *Le père Goriot* — an odious story. I don't think the reproduction of ugly or hateful things always justified by the genius it may display — justified aesthetically, I mean of course. When I got enough for the moment I turned for a tooth wash to the little excellent book on Rome in the Home University series and the Plutarch's *Lives* referred to there. It is an ever fresh surprise to see how many of the axiomatic media got from life by men of the world you find in the old books. My father quoted Tom Appleton,² a noted wit, for "Give us the luxuries of life and we will dispense with the necessities" — which is Menger's³ "*les gens pour qui le superflu est le nécessaire*," previously hinted at by Balzac, and now in the life of old Cato I read of Scopas, a rich man, saying "It is just these useless and unnecessary things that make my wealth and happiness" — which comes pretty near, etc. etc. Now I have nothing on hand and have taken up the *Antigone* in the intervals of paying bills, and leisurely preparations for the return to Washington at the end of the month. Did you ever read Leacock's account of a Greek play given by college boys? It is balm to a wounded soul. It is in *Over the Footlights*, a book I recommend — "Oroastus, a Greek Tragedy, attributed to Diplodokus."

A day or two ago I received a parcel marked "Personal, Confidential and Urgent" and in another place "From Society for the Propagation of the Word among the Heathen; Subcommittee for the Illustrious Heathen" — and began to swear to myself, noting only the first words of the last. I opened and found *Gentlemen Prefer Blondes* (which, like Emerson's

¹ Leonard Craske, *supra*, p. 781.

² Thomas G. Appleton (1812-1884); Boston man of letters.

³ Carl Menger (1840-1921), founder of the so-called Austrian school of economics which emphasized the factor of subjective value in the explanation of economic phenomena.

cannon shot, seems to have been heard round the world). I suspect an ex-secretary who was here with his wife a few days ago.

And so *adieu* for the moment. *Affectionately yours, O. W. Holmes*

16 Warwick Gardens, 1.IX.26

My dear Justice: We got back here yesterday from Belgium, and are to spend a week in Manchester with my people before serious work begins. Meanwhile I am arranging new books, and finding out what is happening to the world.

We spent three delightful days in Antwerp on the way home. First we bought two etchings by Ensor, to celebrate our fifteenth wedding anniversary — how I wish I could show them to you. One is the town-hall at Ostende, as delicate a thing as I have seen, and the other the pier at Middlekerke which for suggestive beauty really is in the class of Whistler. We are both so excited about them that we keep taking trips to the dining-room where they hang, and they somehow seem (as Frida said) to justify our marriage. Then I found four books in Antwerp of first-rate value to me. One, especially, a *Recueil de pièces intéressantes* of 1590, had in it the first relation I can discover not in English of Drake's voyage round the world. Altogether, looking over what I bought abroad I am well content; for when the School of Economics eventually inherits my library it will at least have a significant collection on the history of social thought.

We spent a day also just outside Antwerp with friends. A perfect scene — flat dunes with the old Flemish houses fading into them, and good talk. One of the houses was Camille Huysmans,¹ the Socialist Minister for Education in the present Belgian government and a very attractive fellow. He told me remarkable stories of Lenin, whom he knew well in the days of exile; and he took me to see a most interesting survival of the old common system where the Flemish peasant still has a right to fish, wood, and pasturage for one cow or two sheep. I talked to some old peasants there and found, to my amazement, that one of their deepest convictions was absolute loathing of Spain. Why, I could not understand until further talk revealed that it was the memory of Alva and the Spanish infantry which had been handed down as a legend of hate; and Huysmans told me that Alva still exists throughout Flanders as the nursery bogey for naughty children.

The one positive thing I have done since we got back is to read H. G. Wells's new novel, Volume 1² (there are to be three). It's a remarkable

¹ Camille Huysmans (1871–), Socialist statesman, was Prime Minister of Belgium from 1946 to 1947.

² *The World of William Clissold* (3 vols., 1926).

thing — episodic, formless, and rather stuttering as most of his things are; but queerly alive and vivid and stimulating. Incidentally I think it contains the best criticism of socialism I know. I hope it will come your way. I have read, too, coming over, Anatole France's *Sur la pierre blanche*, which I thought exquisite (Frida interrupts to say the word is not strong enough); and its one indecency is quite brilliant. The young girl prays at the statue of the Virgin, "O thou who didst conceive without sin, help me to sin without conceiving." I shall send you this in the pocket edition in the hope of (a) tempting you into reading it and (b) relieving my conscience a little in the way of Declareuil. And I must not forget to say that in our last days at Waulsort I was lent an excellent book by one Félix Sartaux [*sic*] called *Foi et science au moyen âge*³ which interested me enormously. It might not unfitly be called a modern footnote to Hauréau of the sixties who wrote on the Scholastics; and I found especial interest in its account of medieval science. It is quite a short book, and I believe it is going to lead me further than I ever intended to go — a sure proof of quality.

I have kept rather hidden these two days in London in order to work off arrears of letters. A mass of things accumulates; books to be acknowledged; reviews to be done; and university business. One day I must acquire a secretary, but I fear that is far distant. The Germans, with great kindness, are beginning to notice my work and send me books; and I am rather baffled as to whether I am in duty bound to read them or no before I acknowledge them. One man, for instance, sends me a huge tome on Plato's theory of law and I gaze upon it fondly with a feeling that if it were in English I would happily turn over its pages, but that German with an average of ten footnotes to a page is less inviting than might be. So also with a Frenchman who sends me the first of three volumes on the later Jansenists. A great failure is, I suppose, at least contingently a great tragedy, and to me to see or read a great tragedy is always a Katharsis; yet with Diana at my elbow clamouring to be read to, and *Huckleberry Finn* as the book, somehow or other the last Jansenists are rather far away.

Other news, I fear, there is none. Politics, at the moment, are dead; and the only big event in the next ten days is the necessity of correlating exam papers for the B.Sc. final. That I hate; for I have the baffled sense of disbelieving in examinations without knowing how to replace them.

Eliot's death, I suppose, was expected.⁴ I take it for granted that he was a great man. I only saw him twice, when I found him impressive

³ Félix Sartiaux, *Foi et science au moyen âge* (1926).

⁴ Charles William Eliot (1834–1926), President Emeritus of Harvard, had died on August 22.

but harsh. Your father, if I remember aright, held him in great esteem. He must have done much for Harvard, and certainly he makes Lowell dwarf-like. But I am not sure that a smaller, more intense Harvard would not have been finer; at least I always feel that in the Law School which I respect above all other educational places.

My warm affection to you both. I shall write once more to B. Farms and then try you in Washington. *Ever devotedly yours, H. J. L.*

Beverly Farms, September 15, 1926

My dear Laski: Your last letter tells of your return and among other things of a book by Sartaux [*sic*] which you call a modern footnote to Hauréau. I read Hauréau once with interest, although I believe I was assured that there was a better book by someone else, and I wish I might read this, but we leave here at the end of next week. I wonder what you mean by saying that it is going to lead you further than you ever intended to go. Do you mean in reading? I remember that Hauréau impressed me by showing Descartes more indebted to the scholastics than I had supposed. As to a book on Plato's theory of law, it seems to me that that can wait. I saw the other day, possibly in Höffding, a reference to the *Antigone*. (Don't you always say *Antigone* although the Greek accent is *Antigóne*? I am aware that the *o* is short) for the statement that no one knows where the law comes from. As the reference suggesting it did not give the lines I am rereading it, though I find the chorus a difficulty even with Sir G. Young's translation alongside. I find that *Antigone* is speaking of the divine law — 1.456.457: ἀλλ' αἰεὶ ποτε ζῆν ταῦτα, κοῦδεὶς οἶδεν ἐξ ὅτου φάνη,¹ but it fits pretty well the notion of the common law as pictured by McIlwain in Coke's time even. I shall try to reread *Sur la pierre blanche*, but my rather vague recollection is that I didn't like it. A. F. does not alway hit me — although I bow to *Les dieux ont soif*.

I am not doing any serious reading, but give the best two or three hours to admirable drives, and have done a little more Balzac with continued dislike for the pictures of envy and malice and thirst for luxury. I imagine that I still should get pleasure from the *Contes drolatiques* but I have them not here. I bought them during our Civil War with Doré's illustrations, and have them on my shelf of horrors in Washington. Speaking of the Civil War, I believe that I am becoming a sort of mystical hero to two or three small boys, cousins or neighbors, as a survivor who was in that show. The grandmother of one asked me for an autograph for him, and an aunt stipulated that I should give it to her so that her boy could

¹ "[For their life is not of today or yesterday] but from all time, and no man knows when they were first put forth." (Jebb, tr.).

stick the addressee for a quarter, to get it. So I wrote telling the lad that 64 years ago on the 17th I was at Antietam and nearly killed. I like to boast of my grandmother who died at about that time and who remembered moving out of Boston when the British troops came in. I think Lord Percy occupied her father's house as my father told me that probably he had had his head powdered before a looking glass that is now in my parlor at Washington — but Rice, late of the print department, Congressional Library, knocked it out by saying that his grandmother with whom he had talked remembered the old French war which was earlier than the Revolution. An epitome of (my) life: my first books ends (designedly) with the word "explained" — my last with the word "unknown." *Sat prata biberunt.* I close the gates. *Affectionately yours, O. W. Holmes*

16 Warwick Gardens, 19.IX.26

My dear Justice: You must forgive my long silence, but I have been overwhelmed since I last wrote to you. First there was a visit of a week to my people in Manchester, which was not unattractive, but very exhausting. You see the atmosphere is so strange to Frida that I have to be, so to say, on duty all the time to see that she is comfortable. It isn't that they don't like her, on the contrary. But it is the meeting of two quite different worlds, and my job is to be the medium of adjustment. So while I am there I neither read nor write, but simply talk hard from morning till night. Then we had the problem of this house. The landlord had the option to terminate the lease next March, which he has done; and he offered to renew it only on terms which no professional salary could cope with, in addition to wanting us to take on a studio at the back at 150 pounds a year. As he offered to renew the lease only for 14 years we should have been paying a heavy rental for nothing at the end. So we decided that the path of wisdom was to find a new house and if possible a little freehold so that all we spent on it would still leave us with a *ποῦ στῶ* we knew to be ours. After wearisome hunting we have found and bought a delicious little Georgian house (1796) about five minutes from where we now live. It has one disadvantage — a railway in the front. But it has beautifully proportioned rooms with Adam ceilings and fireplaces, an attractive little garden, and we think that with some five hundred pounds spent on it, we can make it a real joy to us. So sometime in the next few months we shall move there and you will have to accustom your envelopes to a new address.

As you can imagine, this has taken time and energy and I have done little else. But we managed a delightful dinner with Redlich at the Francis Hirsts' just before he set sail for America. (You know, I expect that he is to teach jurisprudence in the Law School for three years.) He is a

great conversationalist, and we wandered easily over the universe. We agreed in liking Jefferson more than Hamilton, in thinking that Destutt de Tracy¹ was a wrongly neglected figure, and in elevating Tocqueville above any similar person in the 19th century. I had to fight both him and Hirst over Leslie Stephen, whose books they rated low; and over you whom they accused of undue contempt for Aristotle and Plato. I argued (I hope fairly) that your "contempt" was simply an insistence that you must see with your own eyes first and adjust your scheme in the light of their criticism rather than bow the knee *a priori*. I wonder much how Redlich will fit into Harvard. He has great incisiveness and is very "European." On the other hand he has warm affection (who could not?) for Felix and I think he is counting much on that friendship as the certain basis of content while he is in America. But you will, I gather, be seeing him in October, I hope, and I shall look forward to your impressions.

We have been putting up this last week my friend Neale who is professor of history in Manchester. He is very able indeed, and I had the joy that comes of watching the intense earnestness of the scholar hunting down documents. He is working on the history of parliament under the Tudors, and especially under Elizabeth, and he is like nothing so much as a dog that has found the scent. He makes the evenings pleasant for he has fallen personally in love with Elizabeth, and as Frida regards Mary Stuart as an unjustly treated woman, I can hound them on to combat in great style. Also several Germans have been to the house, one of whom, Palyi,² strikes me as the cleverest economist I have met in many a day. They are an amazingly grim set of men on their subject, and their zest for categories appals me. To ask a German, for instance, to define administrative law is to invite a metaphysical tyranny which only a thunderstorm can avert. They use words that I (who speak German but slowly) have to unravel in sections and by the time I have managed to construct a reply they have proposed alternative terms as long as I Street.

Of reading, I have done little. I reread Butler's *Way of All Flesh*, with some chuckles but much more with the feeling that it was like Noah's sons uncovering their father's nakedness. I have read a charming account of the salon of Mme Helvétius by one Guillois, and a new novel (not very good) by Galsworthy.³ Also we went to the play to see his new

¹ Antoine Louis Claude Destutt de Tracy (1754-1836), father of "ideology," a science of ideas sufficient, according to its author and disciples, to bring certainty to the political and moral sciences; his admiration for American ideals was reciprocated by Jefferson, who sponsored the publication of Destutt de Tracy's work as *A Treatise on Political Economy* (1817).

² Melchior Palyi (1892-); following a distinguished career in Germany, both as teacher and as economic consultant to financial institutions, Dr. Palyi left Germany in 1933 and pursued a similar career in the United States.

³ *The Silver Spoon* (1926).

piece *Escape* but it was, though nobly acted, a weak evasion of his problem. X is in jail for manslaughter under circumstances that make you sympathise with him. He escapes from Dartmoor in a fog. The play is the hunt and the attitude of the general public to helping him. Most of them do. But the real problem is not the helping of a gallant army officer penalised for an accident, but the old "lag" who has no use for the accepted social standards. I think Galsworthy at bottom is a weak sentimentalist whose life is built round a shrinking from even the necessary cruelties of life.

Our love to you both. Do have a great term in Washington; and greet Rockport for me.

Ever affectionately yours, H. J. L.

Washington, D. C., October 3, 1926

My dear Laski: Your letter telling of your visit to your father's and your hunt for a house was forwarded to me here, and gives me unusual pleasure even for a letter of yours. The simplicity with which you tell of domestic circumstances and your assumption of my interest and sympathy delights me. Perhaps it is rather late in the day for me to remark on such things and not take them for granted, but still they give me a happy pleasure.

I wonder what can have given Redlich or your illegible host (Francis Hust?) whom I do not recognize, the notion that I had a contempt for Plato and Aristotle? I revere them, and have reread Dialogues of Plato and read Aristotle (whom I know less well) of recent years. I simply apply to them what I apply to all the past, my belief that the present conception of the universe and man's place in it is more delicate and profound than ever before — which I think is obvious. Don't you? Apropos of Redlich, you call him a great "conversationalist" — a common phrase. I always wonder why the adjective termination *al* is put into the noun. Galsworthy I mainly pass by on the other side and can't criticize in detail. I think I remember having read very beautiful descriptions of nature by him.

We got here Wednesday morning and things now are in pretty good shape for tomorrow's beginning. I have gone over (now and in the summer time) 57 *certioraris* and have a big stack of them still awaiting examination. I have called on the C.J. but have not seen him, and have missed a call from Brandeis who came when I allowed myself the let-up of a drive in the park yesterday morning. I did have a call from Hough (L. Hand's colleague) which gave me much pleasure. He has praised and criticized and chaffed me in articles in which, as in his opinions, he has a spicy tongue. I liked him greatly. He talks simply and straight — one was willing to trust him at once. Also he spoke with affection and appreciation of Felix, which went to my heart.

No reading for some time, I expect. I took advantage of the time saved by the C.J.'s being out to whisk over to the Congressional Library to look at an article to which I had been referred on Leibl¹ — whom Spengler — *Untergang des Abendlandes* — cracks up as one of the last of the great, and about whom (partly because I couldn't remember the name) I have been vainly curious since 1924. There was only one reproduction of an etching, but there were others of drawings and paintings. I couldn't make up my mind off hand on what I saw whether he was more than a man who thoroughly knew his job. That is, I didn't clearly detect a great poet, or one who had profoundly new things to say. And I don't think that we yet have exhausted what man can learn of, or feel about, the universe — which you fellows, who propose to reshape it, will admit, I think.

I forget whether I have mentioned an excursion into Balzac, in translations that happen to be in the house at Beverly Farms, *Père Goriot*, *Chouans*, *Un grand homme de province à Paris*, and a popular French life of him. I don't like him or enjoy his books. Bob Barlow was talking about him, said in substance, You don't find what we call a good fellow outside our crowd, which has a certain truth. Their damned envies, jealousies, and mean tricks make me tired. But perhaps I should qualify Barlow by saying that one who does not know London or Paris but only this country, cannot quite realize the fierce temptations of social ambition. Still, there is too much of the boor and the snob about Balzac with all his genius. I prefer the British laugh from the guts.

One of the most universally applicable of quotations, which comes up to me in many places, is Caesar's *et superest ager* — but I will plough no more today.

Affectionately yours, O. W. Holmes

16 Warwick Gardens, 30.IX.26

My dear Justice: This letter is written on the verge of term, with all the tensivity which comes therewith. I seem to have spent the last four days in a whirl of new students, black, brown, yellow, and white, adjusting their impossible perspectives to rationality. They are really adorable people — the Hindu who asks you simply to be a father to him; the Chinaman who is naively surprised when you tell him that you know nothing of ancient Chinese political theory; the American (from Iowa) who uses the word "sociological" as though it were in itself pure magic. They keep one at it, but I am still in the mood where they seem to justify almost all the energy one spends on them.

Since I wrote last I have had a good deal to do. A week-end in

¹ Wilhelm Leibl (1844–1900), German painter who passed from an imitative phase to a more forthright and self-sufficient realism.

Cambridge for an adult education conference with the extra job of finding a successor to Haldane as its president.¹ I had a long talk with the latter there at dinner. He interested me enormously in a number of ways. First, the regions where his mind simply doesn't function at all *e.g.*, in the quality of historic mindedness. Rousseau to him is simply a body of doctrines which have no connection with space and time. Second, I was interested in the great art he has — I suppose the supreme administrative quality of getting people to do things. And third I realised the immense power as a factor in social life that comes from having experience of high office. It persuades half one's audience to take pronouncements as valid because of their origin. Haldane *e.g.* urged that much more attention should be given in education to mathematics. Now if there is one thing I am certain of it is that beyond a certain elementary point, mathematics are a permanently closed subject to the larger part of mankind. Yet I heard distinguished professors of classics getting up one after another and saying that without a grasp of Einstein men lost a significant part of the heritage of mankind when they must have known (I) that they themselves didn't and couldn't understand relativity and (II) that if it were proposed to make mathematics after say the elementary calculus compulsory they would fight like cats to prevent it. And I must not forget the other side. Rutherford had a great German physicist staying with him who had never read a line of Goethe, the ancient classics, alternative sciences, did not know anything of history, abstained from the study of politics, and relaxed by reading the higher mathematics. He was a Nobel prizeman, obviously a genius in his line, and, as I said to Haldane, he cared nothing for $\frac{1}{2}$ of the heritage of mankind. I added (Haldane dissenting strongly) that apart from physics I refused to regard his pronouncements on life as having any more interest or importance than those of a bricklayer or a waiter — less perhaps. But of course he had views about everything and could not be made to grasp the possibility that *e.g.* a knowledge of liquid hydrogen did not entitle one to judgments upon how a civil servant should be chosen.

Of reading I have done something. The new W. W. Jacobs gave me a lot of pleasure² — I think Sam, Ginger, and Russet, are really creations of whom anyone could be proud. Then an admirable book on the French Revolution (not new) by one Chassin called *La génie de la Révolution*, and a good one on Babeuf who had been a mystery to me but who in this book by his aide-de-camp Buonarroti turns out to be quite simply a Lenin *manqué*. I picked up one or two nice books in Cambridge, and a nice 17th

¹ Mr. Justice Sankey succeeded to the presidency. An account of the Cambridge conference is in Haldane's *Autobiography* (1929), 319–322.

² W. W. Jacobs, *Sea Whispers* (1926).

century engraving of the great feudist Loyseau that I think would attract you.

One other adventure I must record, but for your private ear only. I drafted some letters for the miners in their struggle with the government, as a result of which I went with them to Downing Street the other day. The change in Baldwin since I saw him last was quite tragic. He had become hard and a little cynical and impatient of all criticism. We had some private talk and I found that he was a most curious mixture of the sentimental phrase and the hard act. Churchill who was there was bigger and more skilful in every way — he knew how to negotiate, Baldwin merely blundering uncouthly.

I send this to Washington as I expect your Court begins on Monday. At the moment I am very barren of American news. Felix has been unaccountably silent to the point even of leaving me worried as to whether he is well. But the spare hours are full I expect with him and I remain patient.

My love warmly to you both. Now that term is at hand I hope to have more interesting things to say. *Ever affectionately yours, H. J. L.*

16 Warwick Gardens, 9.X.26

My dear Justice: These have been difficult days, with more work than I really like. First the hard work of beginning term, with the long procession of students to be interviewed, theses to discuss, and lectures to prepare; with only an occasional relief as when a Sikh who is 42, about 6 ft. 2 in height, and weighing about 16 stone, asked me to be a father to him. And there has been a sudden epidemic of German professors to be entertained — one or two of them very charming, but, in the main, real heavy-weights. I have learned from them at least one thing of great value, that the adjective “sociological” means “indefinite.” When X tells you that he is going to treat his subject *vom soziologisches standpunkt*, it means that he isn’t clear *what* he is going to say about it. And Dorothy Kirchwey’s father¹ to lunch — well-meaning, I thought, but rather dull. I annexed my colleague Jenks (whom you know) to entertain him, and was vastly amused by the elaborate compliments Kirchwey paid him. Indeed some of them were so carefully balanced that at times I thought they would topple over. Then, too, I have had all the documents to study for my first case as a member of the Arbitration Court, and as I cannot, like you, look into my docket and find 2000 cases, I have, as Felix would say, sweated blood over it. It’s a good case, I add, with room for the display of

¹ George W. Kirchwey (1885–1942), law professor and criminologist, was the father of Holmes’s and Laski’s common friend, Dorothy Kirchwey (Mrs. Larue) Brown.

ingenuity; but we don't sit until next Tuesday so I have little notion of how these things work out as yet.²

Of reading but little, though at least 3 things must be mentioned. First the second volume of Wells's new novel, *Clissold*, which, with some bits of bad taste, I thought quite masterly. He has an amazing power of vivid insight, and a courageous frankness which it is impossible not to admire. People complain of his attack on the King; yet if I may whisper it, I think the things he attacks the King for are justly put and have exactly the incidence on social affairs that he indicates. Certainly, in my own experience, the people at the top are helpless mentally and morally before royalty; I have seen even a girl of brains and courage like Elizabeth Bibesco³ tremble with excitement at a garden-party because the Duchess of York asked for some words with her; and at the Institute of Philosophical Studies the largest attendance we ever had at its executive was when the Prince of Wales, who is its patron, took the chair. People of real distinction, like Balfour, stood by him with an air of religious deference which was frankly nauseating. The other book is sheer delight — one of the wittiest things I have read in many a year. It is by the authoress of *Elizabeth and her German Garden* and is called *Introduction to Sally* — I do beg of you and Mrs. Holmes to read it aloud over solitaire — you will have some of the best comedy you have ever experienced. In a more sober line I have read a book by one Chassin called *La génie de la Révolution* which Morley commended years ago, and is quite excellent, and a study of Mme. de Geoffrin and her salon⁴ which is nearly as good as the writer's *Life of Julie de Lespinasse*. There is one adorable story in it of Fontenelle. The latter had a nephew "sot, laid, fat" (I quote Fontenelle) who took ill; the old writer, who was then 90, spent days at his bedside in misery. At last the vigil began visibly to affect his health and Mme. de Geoffrin urged him to come home assuring him that the nephew would recover. "That," said Fontenelle, with tears in his eyes, "is just what I fear." Do you know a better definition than that of what the French mean by *esprit*?²

Of other news but little. I had one interesting evening in Bermondsey where I talked on Burke in a converted stable to 200 dockers and had a most intent and intelligent audience; and a great night with the young folk at the School where they received the freshers and were as delightful and irresponsible as only undergraduates can be. Also I have (with Frida's

² The Case of Postmasters and Assistant Postmasters (#1256), 8 Industrial Court Decisions 306. Laski had recently been appointed a member of the Industrial Court, a post which he filled until his death.

³ Princess Bibesco was Asquith's daughter, Lady Elizabeth Asquith.

⁴ Pierre Ségur, *Le royaume de la rue Saint-Honoré: Madame Geoffrin et sa fille* (1897).

approval) definitely finished the purchase of the house, to which I think we shall go in about Xmas time. We went over it again and fell in love with it a second time. It will, I expect, exhaust my financial powers for a bit; but it exercises the usual magic of ownership and I always seem in these money matters to fall on my feet so long as I do not bother unduly about them. It is a great thing to know that one has a $\pi\omicron\upsilon\ \sigma\tau\omicron\delta$ from which only a revolution can move one and to be able to change about the house without fear of or permission from some landlord ten degrees removed. Did I ever tell you that between ourselves and the ultimate ground landlord of our present house there are actually six sub-tenants.

For the rest I have been hard at my book on communism which moves slowly on its way.⁵ I emerge as an admirer of Lenin who was a master of courage and strategy. But I emerge also with the conviction that toleration and good will, bourgeois as they are, outweigh in virtue all the other qualities in the world. And the dogmatism that is the price of a communist scheme seems the more unlovely the more one examines it. However you shall judge for yourself in the spring of next year when the little book comes out.

I have been rather baffled by receiving a number of circulars from the Harvard Law School asking for money. I don't like their scheme. A professorship of legislation seems to me merely foolish, and one of criminology dubious because likely to give a myopic view; and I don't want the Law School to grow bigger — it's already over-big. Accordingly with some doubts I have decided to do nothing for the scheme and send a gift to the library instead. I'd like much to know what your views are about this. To me it looks as though Pound had been trapped by the illusion of size.

Our love to both of you.

Ever affectionately yours, H. J. L.

16 Warwick Gardens, 16.X.26

My dear Justice: Your delightful letter, written just as the Court had resumed, went to my heart. I imagine [you] as a small islet of mind in a seething ocean of *certioraris*. And that court of yours reminds me that I had my first judicial adventure the other day when I sat to hear a post office case in the Civil Service Court.¹ It was very interesting, and the standard of argument was, throughout, very high. And I liked my colleagues, the more especially, I suppose, because they gave way to me on two points in the decision. It was a new experience to write it, and I certainly learned much about the art of phrasing in the endeavour to

⁵ *Communism* (Volume 131 of Home University Library, 1927).

¹ See, *supra*, pp. 881-882.

find words they were willing to accept. We, alas, cannot have dissenting judgments; and that will, doubtless, one day cause me pain. But I certainly enjoyed the first dip in the judicial ocean.

This week Frida came along with me to Edinburgh and Glasgow, where I had to give some university lectures. At Edinburgh we stayed with the Kemp Smiths,² he being a philosopher (*vide* his book on Kant) and a most charming person. Scottish academic society is very interesting — it has a flavour quite its own. No other world exists for it, and men have a tendency to regard themselves as distinguished because they are professors in Edinburgh University. It was queer to meet one emeritus professor of law (aged ninety-three) whose grandfather had been a student of Adam Smith at Glasgow which takes one straight back to the middle of the eighteenth century; and the old gentleman told me of Carlyle's visit to him in the sixties when he asked C. what he thought of J. S. Mill and was given a scornful "He has nae roots in his mind" for an answer. I frankly enjoyed his reminiscences, which went right back to the Disruption of 1843, better than anything else except Grant's bookshop where I bought several books that maketh the heart to rejoice, including an 18th century Molière with plates by Moreau le Jeune in 6 volumes for a pound. Glasgow was more modest in itself but less attractive — partly perhaps because everyone I happened to meet was godly and a Hegelian and my mild expressions of scepticism about the latter were not well received. When, for instance, in my second letter [*sic*] I soberly and grimly took the general will to pieces, I saw the face of the professor of moral philosophy look like an avenging angel. It became his job to propose a vote of thanks to me; and with an unction that I dare not even try to convey in words he warned the youth present that this "iconoclasm about ultimate truths" was a path he did not advise them to tread in their own lives; then, raising his sobbing voice, "it leads to the slipping precipice of disaster." My withers, as you can guess, were not wrung, but I had great difficulty in stopping myself from making a satirical reply.

We came back to find that the way is now open for planning our new house, and we are plunged in catalogic mysteries about fireplaces, parquet floors, and other such things. My one triumph will be a series of cupboards at the base of the bookcases in which myriads of pamphlets can be kept, and an armchair upon which I can write by the adjustment of one of its arms. The house pleases us the more, the more intimately we examine it, and I think that two months of decoration and overhauling will make it a really attractive thing.

Outside of Scotland, I have not seen people since I wrote last as I

² Norman Kemp Smith (1872—), Professor of Logic and Metaphysics at Edinburgh, 1919-1945.

have been busy on my book. But I have read one or two things, including I hasten to mention, a quite admirable detective story called *The Murder of Roger Ackroyd* by Agatha Christie which I commend to your evenings and defy you to solve honestly. And for lecture-purposes I have been rather deep in Plato, often with irritation, but also with deep admiration. From what you say, I should not dissent. There are parts of the *Phaedo* which I rate as high as anything except supreme poetry; and the *Apology*, the *Crito*, and certain pieces of the *Republic*, have given me great comfort. But if Plato had not written them, there would not, I think, be any reason to think of the *Laws*, the *Statesman*, or the *Meno*, as other than third-class. On the other hand, Aristotle never fails to refresh me; and though, of course, his literary appeal is *nil*, the more one reads him the more one has the sense of the incomparable common sense and judgment the fellow had — never loose, always perceptive, and always balanced. And while I am on these Greeks I desire to emphasise two heresies (a) I think Aristophanes a pretty poor sort of person — rather like H. L. Mencken — and (b) that Xenophon hasn't any of the qualities I read that he possesses in the books. The fault, doubtless, is in me; but the other day I heard Mackail³ talk of "the faultless simplicity" of Xenophon and picking him up for the first time since school days, I was literally bored to tears. On the other hand by my bed in Edinburgh was put the *Greek Anthology* and there I think endless eulogy is amply justified.

You will, I expect, have heard that Asquith has resigned the liberal leadership.⁴ I'm sorry, not only because a landmark goes from English public life, but also because it really means, I fear, that the party rank and file had decided to cleave to Lloyd-George. Asquith has had terrible faults, and very limited horizons; but I know no man in our public life more loyal or more generous. He has been lazy and self-indulgent and indecisive, but no one has ever lost anything by trusting him and he has never been charged with deception. I hate to think of him having to yield before a fellow like L-G who hasn't a principle anywhere in his composition. And the latter is so vindictive that he will set himself out to ruin people like Simon who stood by Asquith. Ramsay MacDonald said to Frida at the Labour Party Conference that he had never known

³ Presumably John William Mackail (1859-1945), classicist, literary historian, and biographer; his works include *Select Epigrams from the Greek Anthology* (1906).

⁴ In early October representatives of the Liberal and Radical Candidates' Association had urged Lord Oxford to take the leadership in restoring unity in the Liberal Party. On the 14th, however, Lord Oxford announced his resignation of the leadership of the Liberal Party, pleading that his age made it impossible for him to undertake the formidable task of eliminating dissension in the Party.

a peaceful hour since he entered Parliament, and then added, not less truthfully, no peaceful hour, either, when he was out of it. Politics is certainly the grave of the ultimate decencies.

Well, I must go to dress. I dine with Sankey before he goes off on assize, and shall meet the new judge, Clauson,⁵ of whom good things are said. But of this, next week.

Our warm love to you both,

Ever affectionately yours, H. J. L.

Washington, D. C., October 13, 1926

My dear Laski: You were harried and bothered about writing your last — and I am about answering it. The Lord knows when I can finish the few words I begin now. Before I refer to what you say and before I forget it: Do you remember Zane whom you ran against in some criticism and who has had whacks at me and I believe Pound?¹ During the war he excluded by one stroke all consideration of any work by German jurists — another wiped out Hobbes, Bentham and Austin, and in short left one to suppose that there was nothing worth considering except what he as yet did not see fit to reveal. Incidentally he said that anyone who thought my *Kawananakoa* case was law might give up all hope of ever being a lawyer — which was rather hard on me. I saw a notice by him of Vinogradoff's *Custom and Right*,² in which at last he praised and seemed to think Vinogradoff the greatest jurist of the last 50 years. I have sent for the brochure . . . and though I have had no time to read it yet I have a deep inward conviction from V's book in the Home University Library³ — poor — and his book on Villenage — good — (I forget the title) that Vinogradoff was a distinctly finite being — not I should think to be named in the same year with Ehrlich. You know more about him. Am I wrong?

I agree with you, *totis viribus*, as to mathematics. Postulates depend on insight, man's greatest gift — one man having it in one direction, another in another. Mathematics like other reasoning starts from postulates, and in my very limited observation, mathematicians show little insight in the postulates that they accept. Of course I can speak of them only outside their special province, but it has struck me with mathematicians here — and I might add Bertrand Russell, and Haldane [illegible] in philosophy, although I was not thinking of them when I

⁵ Sir Charles Clauson (1870–1946) was Judge of the Chancery Division from 1926 to 1938 and from 1938 to 1942 was Lord Justice of Appeal. In 1942 he was raised to the peerage as Baron Clauson.

¹ See, *supra*, p. 180.

² 35 *Yale L. J.* 1026 (June 1926).

³ *Common-sense in Law* (1913).

began. They say math teaches accuracy of thought. I should think it was the last thing to have that effect, as it is the place where an undistributed middle is almost impossible. A is always A and X, X. You learn accuracy where you have to do the quantifying. How I should like to run on — but I can't, and must go to work — it is Friday now. We have an off day and I am more busy than ever in the moment of leisure.

Affectionately yours, O. W. Holmes

Washington, D. C., October 23, 1926

My dear Laski: *Imprimis* congratulations on your purchase of a house. I think it adds to the pleasure of life to own your own headquarters. For although when I first came to Washington I was in another man's house with his furniture, without my books, and working in a room where his marriage certificate, sporting and other prints, occupied the walls, and yet had a good time, it wasn't near so good as it could have been if I had been here. *Secundo* — What is it about your being member of the arbitration court? What is the Court? and all about it? This is your first mention. If I may venture a hint, I hope you won't be too keen after the display of ingenuity that you mention. I was afraid from your account that you rather overdid it when you were on a jury. 3. As to the contribution to the Harvard Law School I have shared your impression so far that I have not forked out, and talking with Brandeis today found that he was even more decidedly of the same mind. I don't remember the proposed professorships now, but several of them struck me as more than doubtful. Beside what you mention, wasn't there one on the History of the Law. I wouldn't endow that. 4. As to the attitude toward royalty, of course I have been struck by the same thing. I remember in the middle of an interesting talk at a garden party at (Buckingham?) palace the lady I was with broke off to rush and adore as some royal children went by. But I don't think you should call it nauseating. It may be, and I don't doubt often is not snobbish, but just a kind of religious exaltation, an ideal of loyalty, really to England, personified. It is not relevant but I add that I think Thackeray quite wrong in assuming that it would be discreditable to be pleased to walk down Pall Mall arm in arm with a couple of dukes. It very probably would mean only satisfaction at evidence of one's own importance — which it is not base to feel, only foolish to believe (unless you are a Christian).

I have just been impressed with the doctrine of relativity in a different sphere from Einstein's and one that doesn't require a knowledge of mathematics although much used. At our conference yesterday p.m. (for now it is Sunday) we had some rate cases, the question being whether the rate fixed by the N.Y. legislature for gas companies in New York was con-

fiscatory and so, unconstitutional.¹ We solemnly weigh the valuation of the property and all the tests and decide pro or con — but really it is determining a line between grabber and grabbee that turns on the feeling of the community. You say the public is entitled to this and the owners to that. I see no *a priori* reason for the propositions except that that is the way the crowd feels. I tell them that if the rate-making power will only say I have considered A. B. & C., all the elements enumerated, we accept the judgment unless it makes us puke. It is like the ideal of woman — on one end you have the dames of the *Decameron* who care only for God and man, at the other a peaked, elbowed school marm who talks on high themes and thinks man a superfluity of nature. A given community fixes its conception somewhere midway according to the dominance of companionship or dimples.

As to the communists I have little doubt that I shall agree with what you say. I take no stock in any scheme for remaking society that begins with property instead of life. And that means that I don't care much for any scheme that could be thought of now. I utterly disbelieve all postulates of human rights in general. Those established in a given society stand on a different ground. But I grow like my school marm above in what I am writing.

Things have gone pleasantly with me so far, and the constant overpressure of the last three weeks will abate somewhat with our short adjournment tomorrow. I shall fire off an opinion² and have only one to write — on a matter that interests me much and will let in about an inch of theory *contra* some English intimations in your cases.³

Affectionately yours, O. W. Holmes

61 Warwick Gardens, 23.X.26

My dear Justice: Your ever-welcome letter has just arrived, and I must answer it before I sit down to a ghastly brief 300 pages long on the wages of Admiralty surveyors which I have on Monday in the Civil Service Arbitration Court.¹ Your mention of John Zane comes to me a little faintly down the years as of one who wrote boisterously but without learning in the *Michigan Law Review*. I should not, as now informed, take anything he said very seriously. I have that little book of Vinogradoff's about which there isn't, I think, any reason to get excited. I knew V. pretty well. He

¹ *Ottinger v. Consolidated Gas Co.*, 272 U.S. 576; *Ottinger v. Brooklyn Union Co.*, *id.* 579. In each case the Court held that the rates established by the legislature were confiscatory.

² *Palmetto Fire Insurance Co. v. Conn.*, 272 U.S. 295.

³ *Deutsche Bank Filiale v. Humphrey*, 272 U.S. 517 (Nov. 23, 1926).

¹ Case of Overseers Admiralty (#1258), 8 *Industrial Court Decisions* 316.

had immense learning of which he always made a great parade; but I never thought he had an incisive mind, and apart from that famous paper on folkland² and the admirable preface to his *Villainage in England* I never could get really excited by him. He always struck me as immensely pontifical and he always took disagreement very badly, indeed, like most Russians, he seem[ed] to regard it as a moral offence. I remember writing in some Oxford paper when Korkunov's *Theory of Law* appeared that I thought it consisted chiefly of pompous commonplaces elaborated without regard to their insignificance. Vinogradoff replied in an angry letter that the book was of seminal importance. I retorted that discoveries like the remarks (I) that law is the index to the mind of a people (II) every legal system in the Western world bears the impress of Roman law might be true but did not justify excitement to which his response was that a professor could not be expected to argue with an undergraduate on these matters. I drew my deductions accordingly and did not frequent his Omnicompetence thereafter. I thought, too, that his volume of introduction to Historical Jurisprudence was all swiped from Pound without adequate acknowledgment. But I grow profane. *De mortuis nil nisi bunkum!*

Much has happened since I last wrote. First and foremost a really delightful dinner with Sankey, J. who was in great form. He told me much of his colleagues that was amusing. The new Lord Justice, Lawrence, has such a bad temper that the bar has privately suggested its hope that he and Scrutton, L.J. will not sit in the same Court; that Horridge, J. was so overwhelming in a recent assize that counsel for the plaintiff lost his temper and said that if the judge would come down to the bar and argue like a man he would deal with him faithfully; that the C.J., Hewart, made a speech in Latin recently and was complimented by an eager Welsh counsel on his skill in Greek! I went, too, to dinner with Jaeger,³ the great German classic[ist] who has succeeded Wilamowitz⁴ in Berlin. He was most attractive and his hostility to Aristophanes for daring to satirise Socrates was one of the most charming things I have seen. He told us one great story of Mommsen hearing that Max Müller⁵ had been appointed professor in Oxford. "Have they then no humbugs in their own country" said Mommsen, "that they must deprive us of grounds for grumbling."

² "Folkland," 8 *English Historical Review* 1 (1893); reprinted in 1 Vinogradoff *Collected Legal Papers* (1928) 91.

³ Werner Wilhelm Jaeger (1888-) was at the University of Berlin from 1921 to 1936. Professor Jaeger then moved to the United States and since 1939 has been University Professor at Harvard; his best known work is *Paideia: The Ideals of Greek Culture* (3 vols., 1939-44).

⁴ *Supra*, p. 50.

⁵ Friedrich Max Müller (1823-1900); comparative philologist and orientalist who from 1848 until 1894 taught at Oxford and did much to popularize the theory of Aryanism.

He was the old-time German *gelehrte*, modest, interesting, eager to exchange ideas, and with a pride in his job that was impressive. Yesterday, I gave my inaugural lecture at the School, a copy of which I shall send you as soon as it is printed.⁶ I greatly enjoyed it, for it gave me an opportunity to write a manifesto against the psychological school which talks a lot of nonsense these days. My old tutor, Ernest Barker, was in the chair and made a most charming speech, pleasantly flavoured with recollections of my sins as an undergraduate; and Haldane and Beveridge spoke most kindly as my compurgators. In some ways it was a difficult job for I had at once to eulogise Wallas and plead for my own view of the job. I hope he liked it; but I do not really know. One other interesting day was a meeting with the Trade Union Council to see if we could find a basis for approaching the government on the miners' lockout. We failed, but I was most impressed by the shrewd commonsense of the trade union officials, especially of J. H. Thomas.⁷ For a sturdy and well-informed insight into practical politics I have never met the equal of these fellows. On the other hand, it was very difficult to make them bend their minds to the wider problems beyond. And when it came to research, the idea did not mean the same thing as it did, for instance, to Tawney and me. They thought of it as something one turned a clerk on to; the idea of research as discovery was literally a thing that had never presented itself to them.

Your comment about my scepticism on mathematics gratified me as, I suppose, agreement does. But it has a curious sidelight that will amuse you. We have been having a fight in the Board of Studies about the constituent parts of the degree; and Tawney and I have been fighting against statistics as a compulsory subject. Bowley,⁸ its professor, is probably the greatest expert in his job in this country. He was a senior wrangler, a Smith's prizeman, an F.R.S. and so forth. He made a passionate speech on the importance of statistics as the one discipline like to give accuracy of mind. In support of his contentions he presented some tables of students' work which, as I took great pleasure in pointing out, did not contain one accurate calculation. His additions and subtractions were so wrong that most of his deductions were meaningless. His colleague also presented a large number of theses built, if you please, on three students' work. Tawney asked if he would publish a paper built on the analysis of three cases. He got, of course, an ardent "no." But it did not occur to

⁶ *On the Study of Politics: An Inaugural Lecture Delivered at the London School of Economics and Political Science on 22 October 1926* (1926); reprinted in *The Danger of Being a Gentleman and Other Essays* (1940), 33.

⁷ See, *supra*, p. 626

⁸ Sir Arthur Lyon Bowley (1869–); Professor of Statistics, University of London, 1919–1936; author of innumerable works on economics in general and statistics in particular. See *supra*, p. 716.

either that they must apply the same principles to themselves as they did to other people.

We are having a fascinating time getting our new house put into order; and I think Mrs. Holmes would enjoy our hunts round for the oddments of Georgian furniture which give the note of completeness to the rooms. At the moment we are searching for the perfect Chippendale sideboard — not an easy thing. We have a perfect 17th century carved oak chest for the hall; you would, I think, endorse it as a work of art. And for my study I have had a large photograde taken of the National Gallery Portrait of old Hobbes — a most noble head with a mouth that is a marvel of obstinacy. And a small one of old Prynne which I have bought not because I like him but because, as Maitland said, old Prynne munching crusts in the Tower while he copies out records is an heroic figure.

My love to you both. Do not do too much. Life is more even than the largest possible number of *certioraris*.

Ever affectionately yours, H. J. L.

Washington, D. C., November 1, 1926

My dear Laski: Is it that you are more suggestive — Is it that when I am swimming in the law I have few ideas outside of it? Is it — ? Why is it that I so often write half my letters in answer to questions that your letter evokes? I don't know what Carlyle's remark about Mill meant to Carlyle, but it seems to have an obvious truth in it. Carlyle's thoughts were rooted in his temperament, his prejudices, and his imagination — Mill's were detached by reason. People pay higher for luxuries than for necessities and Carlyle's pictures may outlast Mill's thoughts but I doubt if Carlyle gave the world as great a shove as Mill. I have forgotten what I said about Plato but I believe I have given him his dues of love for the things you mention.

I feel much as you do about Aristophanes, bar passages no longer remembered by me when he says beautiful things — but the fun of the ancients! Excuse *me*. Plautus I thought not as good as a circus or on a higher level — when I peeked into him a year or two ago. Why you snub Mencken in that connection I don't quite see. I have read what I didn't care for in him but I took much pleasure in a volume of *Prejudices*. Xenophon I haven't looked into except the *Memorabilia* since I was young, except that a glance at one of the translations at our house at Beverly led me to wait for better days.

You tell me of a new judge — but as yet nothing of my dear Leslie Scott — I do want to see him on the Appellate Court. We adjourned this morning. My last opinion — a case assigned to me on Saturday — has come back in proof from the printer and after I have sent it out I have no

duties to speak of except a trifle of 8 *certioraris* that came in this morning. I mean to read Wallas's *Art of Thought* — though I believe you did not care much for it and his antecedent synopsis did not look like a flash of lightning — and a brochure of Vinogradoff's [of] which I hope to think lightly for reasons of personal malevolence as I explained the other day. It was so very highly cracked up by your friend John M. Zane.

Tuesday 2d. I mean to go out presently to look for some witch hazel which my wife always gets on this day. I don't know what the day is, (it should have been before Halloween), or why, except for the flower of a bush that blossoms at this time. Returning to the fun of the past, it dies quicker than the tragedy, I suppose because more generally dependent on circumstances or special powers of mind. Artemus Ward I found last summer had little that lasted — a few memorable things based on the eternal, but largely mannerisms that no longer please and make one wonder that they ever did. Ditto of a good deal of Shakespeare. The fun of the middle ages is generally, so far as I know, the dirty talk of boys. All of which I believe I have said before.

Beveridge has sent me another chapter which I now have opened and begun to read. It is interestingly told but I hate to go over the squalid preliminaries to the war as I hate to reread of the blunders and worse of the war itself and its sequel. I don't see any great good to Beveridge in my reading, beyond a few corrections of English and some occasional point when my memory or local knowledge helps — but I think I have encouraged him a little when he has been feeling down. Brandeis wishes that he had taken Taney (Marshall's successor) instead of Lincoln — but as he had a stomach for it I think Lincoln was the better choice. It is not the kind of undertaking that would have tempted me, but no biography — simple or auto — would. I like more abstract themes. I get letters from time to time suggesting everything from my views of life to my recollections of my father which move me only as bores to answer. I believe this sums me up. My opinion has gone forth — and when the irritation of the remaining small matters is over I shall look out on a blank world and try to take my ease.

Affectionately yours, O. W. Holmes

Washington, D. C., November 5, 1926

My dear Laski: Your letter October 23 came just after your Inaugural on the Study of Politics and I have just read both, with equal pleasure. The address seems to me admirable both in its specific suggestions and in its exaltation of the service of thought. I notice with interest that you have added affection for Sankey to admiration of him.¹ I wish I knew more

¹ Laski's Inaugural lecture (*supra*, p. 890) was dedicated to "my friend Mr. Justice Sankey with enduring affection."

of his work. I am delighted at what you say about Vinogradoff as it confirms the prophecy of my soul. I shall read him directly.

My work is over for the moment, but leisure comes, never. When law and life run short of chores — the wondrous tale's filled up by bores. However, I have had some enchanting drives and yesterday p.m. went to my first and only show for years — *The Barber of Seville* — to see Chaliapin, but alas he filled only a subordinate part and didn't give my wife the impression that I wanted her to get — that I got in London from *Ivan the Terrible*.

I sympathize with the preparations for a house of your own, but there is a feeling of money in the background that makes me doubt if you know how we felt at Mattapoisett when we decided to invest in a wheelbarrow for manure to take the place of a [illegible] drawn by a bit of rope — or the joy we used to have when we lived in rooms next the Athenaeum and would skip off to the Museum to take 50 cent seats and sneer at the nobs. You talk of Chippendale — I was devilish glad to get pine boxes for my books. Not, though, that I don't believe you have shown more resolution in that way than ever I was called on to show. I don't forget that.

My secretary,² a very nice lad, has taken some walks with me. This morning I showed him the Soldiers' Home with the blue sky seen through the gold of the tulip trees, then over to the Adams Saint Gaudens statue in the Rock Creek cemetery, then whisking across the town to Arlington in the uncertain effort to tread the turf under which I shall lie before long. I found a spot, but whether it was *like* it or *it* I know not. I have returned Beveridge's chapters with some general criticisms that I hope were not unjust. I think he seems unduly impressed by the Southern point of view, which I imagine is new to him, before the war — an unfortunate atmosphere, if I am right, for a book on Lincoln. However he honestly and sincerely wants to get the facts and let them tell the story. Of course I was nearer to the events than he, and I don't think I'm prejudiced — although in my day I was a pretty convinced abolitionist and was one of a little band intended to see Wendell Phillips through if there was a row after the meeting of the Anti-Slavery Society just before the war. How coolly one looks on that question now — but when I was a sophomore I didn't like the nigger minstrels because they seemed to belittle the race. I believe at that time even *Pickwick* seemed to me morally coarse. "Now his nerves have grown firmer," as Mr. Browning says, and I fear you would shudder in your turn at the low level of some of my social beliefs. With which, *adieu* for the time. I suppose this will just miss a boat, but will muddle through in time. *Affly yours, O. W. H.*

² Thomas G. Corcoran (1900—); later renowned for his role as anonymous counselor of President Roosevelt and thereafter private practitioner in Washington, D. C.

16 Warwick Gardens, 11.XI.26

My dear Justice: A perfect delight of a letter from you warmed the cockles of my heart. It came after ten days in which I had been peculiarly driven, and gave me a sense that there are things behind the endless *paperrasserie* in which I seem to have been deluged. Let me first answer some of your questions. Leslie Scott, I gather, is talked of for a lordship of appeal when a vacancy comes; but the proposal to create a place for him which was, I believe, privately made failed because the Lords are well up to their cases and there would have been opposition. But the talk says that he will certainly get the next big post. I hear, poor fellow, that he needs it, as he has lost a good deal of money in Russia. As to my own Court. It deals with disagreements between the government and its employees and means sitting with a permanent president and one other person about once a month. So far I have sat on five cases and thoroughly enjoyed them. It is an invaluable experience to me as I learn a good deal not otherwise knowable of the inner workings of the civil service; and I see its results reflected in certain alterations of previous judgments which at least proves that my mind has not yet closed!

Since I wrote last I have been overwhelmed. First helping Frida to make decisions about the decoration of the new house. She is a wonderful person, and my new study, from the point of view of comfort, will be even an advance on this one. The misery has been the packing of my books with a view to having that ready the day we move in. So I write with not a dozen books in this room, and, consequently an indefinable emptiness in the heart. And I have sat on myriads of committees — at the School, the Labour Party, and what not which were all necessary, but built on the basis of a world in which there is no time. Also, as chairman of the mediation board of the co-operative societies.¹ I had to settle a dispute about the wages of some 1000 men; and four nights of evidence plus the writing of a reasoned decision is not done with a flick of the eye. And I had to give a lecture to a conference of workingmen which, following one by Hugh Cecil,² I took rather special care to make informative and found, as a result, that it was more laborious than I expected. Finally, having been elected a corresponding member of the *Deutsche Gesellschaft für Sociologie*, I had to compose a rather elaborate address of thanks for their proceedings. The result has been that both reading and writing from my own standpoint have rather gone by the board.

But there has been one delightful encounter that has been a light amid

¹ Laski was one of a panel of chairmen of the National Conciliation Board of the Co-operative Wholesale Society.

² Lord Hugh Cecil (1869–), who became Baron Quickwood in 1941, was the author of *Conservatism* (1912); see, *supra*, p. 603.

toil. We went the other day to lunch to H. G. Wells. That, in itself, was delightful. He is at once attractive and impossible, always stimulating, always suggestive, flashes of great insight and not an iota of profundity. I pointed out to him that in one lunch he dismissed 8 philosophers, 6 novelists, and at least a dozen statesmen as worthless. Mostly, he was right; usually for the wrong reasons. But there I met a Frenchman, Abel Chevalley, whom I do, do greatly wish I could bring round to 1720. He was a diplomat, at one time Ambassador to Poland, and his hobby is English literature. We probed each other at Wells's as gentlemen should and found we wanted to go on, so on Sunday he came and spent the morning here. He talked as I imagine Renan talked — a grave humour in which the irony of the receptive spectator is the predominant note. "Taine" (I quote some of his remarks) "thinks that criticism is a branch of obstetrics; but he does not see he is delivering a child whom the parent insists is supposititious!" "Every aristocracy should be religious: ceremonial to a nobility is like a finely chosen perfume on an elegant woman." "Chateaubriand made God in his own image, and looking upon his handiwork declared that it was good." "Dickens was greater than Thackeray because he loved more greatly." I select, of course, at random, as I remember. I wish I could sketch you the eager little man, with his eyes lit up, his hands gesticulating, unable to sit still through excitement. One of his best remarks was on Galsworthy. "He is so sensitive that he will not see through his characters for fear of causing them pain." We discussed everything — the classics, the French Revolution, Russia, and he was always suggestive and always well-informed. One or two of his judgments interested me greatly — his high regard for M. Arnold as critic (he has "*justesse*"), his contempt for Macaulay, his insistence that of all English writers Hazlitt had the best natural taste in the nineteenth century. I wish so much you had been there. We parted vowing to meet in Paris as soon as may be. And he sent me today a book on Deloney, the English novelist temp. Elizabeth that is full of good things.

What else? A little reading — an excellent book on Plato by A. E. Taylor, not to be read all through, but, wisely skipped, very helpful especially (*me judice*) on the *Protagoras* and the *Laws*. A book of much charm by Henri Tronchin, on his ancestor the Genevan doctor who was a friend of Voltaire. A pleasant novel by an American lady named Edna Ferber called *Showboat* which was, I think, indicative of great promise unless it is the work of an arrived author whom I in my ignorance know not. And those vast opinions, sent me very kindly by Brandeis, in *Myers v. U.S.*³ in which, frankly, I thought the case for dissent so obvious as

³ 272 U.S. 52. A majority of the Court held that a portion of an act of Congress requiring the consent of the Senate to the President's removal of postmasters from office was unconstitutional, despite the fact that the executive's

hardly to need even your page. For a power to create a post is surely a power to create its conditions; otherwise your President would be an intolerable autocrat.

Beveridge is a wonderful fellow to stick at his job with that devotion. My only doubt is the old one — is a new life of Lincoln likely to add so much, either in outline or in detail, as to make it worth writing? I do not know, hence, doubtless, my scepticism. I'd rather see a real life of Jefferson. Harcourt sent me the other day a biography by A. J. Nock which I thought pretty thin stuff. And I find Jefferson so real a puzzle that I should be deeply grateful for a book which dug deeply into the sources. Certainly had I continued to live in America that is the job to which I should have devoted myself.

My love warmly to you both. Don't spend too much time on *certioraris*; and remember Birrell's advice to me for leisure periods — while there is life there is Dooley.

Ever affectionately yours, H. J. L.

Washington, D. C., November 23, 1926

My dear Laski: Your letter (Nov. 11) is most interesting, and tells me about what I didn't know before, your appointment to the Industrial Court, although I still have no idea beyond what you give me of its and your functions. I should think it would be a very valuable experience to you. I appreciate your sitting in the empty room. I worked in one for my first year here, as I believe I have told you, with the marriage certificate of the lessor and pious, relieved by sporting, prints.

We began sitting again yesterday, adjourning at 2 for luncheon and McKenna's funeral — a truly kind soul. The clergyman said that when his daughter told him a few days ago that he had been a perfect father, he said, "only a decent gentleman." I suppose like the rest of us he had his vanities but I think he also had humility. Some of the brethren took so long with their discourses that we shall take some time this morning in finishing — I am not reached yet. I have one case that interests me much, on the time at which the mark is to be valued in a suit here against a German bank, when the demand was made at a time when the mark was worth much more than when the suit was brought here (to reach money in the hands of the Alien Property Custodian).¹ It interests me because the dissent by Sutherland — McReynolds, Butler, Sanford, accord — seems to me to illustrate, as so many cases do to my mind, the notion that the law is a brooding omnipresence in the sky, as I once put it. When

power to name postmasters was conferred by an act of Congress. Holmes delivered a brief dissenting opinion, and McReynolds and Brandeis, JJ., each wrote elaborate dissents.

¹ *Deutsche Bank Filiale v. Humphrey*, 272 U.S. 517.

a man asserts a legal right he must refer to some law that creates it, and I say that the only right that the plaintiff had was a right created by the German law — and that was a right to so many marks and nothing else — not to the value of so many marks in other commodities at a given time — but to so many marks when the suit was brought. The tendency of some English and other cases is *contra*, but they none of them that I have seen seem to me to go to the bottom of the business. I think the same thing turns up on the question of rights against the sovereign, or center of legal authority however you name it. Borchard has a long article on this last theme in the last *Yale Law Journal* ² — interestingly learned but to my mind helpless when he comes to this proposition. Also I have just reread Bacon's *Essays* — many shrewd thoughts and some noble language. I think I wrote the other day that great works survive largely by sound. Style seems to me fundamentally sound. But you could get more intellectual stimulus from a current number of the *New Republic* or the *Spectator* — why read him then? I think the question not entirely easy — and I should advise a young man to read mainly books of his own time until his views begin to be settled. Then he will begin to extend his boundaries. There is philosophy in knowing the vicissitudes of thought through which one's crowd has gone before getting to where it is — and it is pleasant to be cultivated, and so forth and so forth. At the same time every summer when I read a few pages of classics I have an anxious sense that it would be easy to waste time upon them. Of course pleasure is self-justifying — but to me reading of old literature is but a moderate joy — a nutpicker and a shagbark — when you might have a slice of something better with less trouble.

I had a line from Beveridge rather gloomy over his work. It is not the kind of job that I should care for — but I have no doubt that it will be *the* life and the only one when he has done. Also this evening a letter from Wu.

Affectionately yours, O. W. H.

16 Warwick Gardens, 21.XI.26

My dear Justice: A grand letter from you was an oasis in the midst of a heavy week. But now, thank heaven, things will go more quietly until the end of term. Last week the outstanding thing was a paper at the Sociological Club by Sir M. Amos (whom you may remember) on the need for scientific jurisprudence.¹ I wish he would print it, for especially its analysis of the sins of Pound was a masterpiece. His argument was that

² Edwin M. Borchard, "Governmental Responsibility in Tort" (Part I), 36 *Yale L. J.* 1, November 1926).

¹ See Sir Maurice Sheldon Ames, "Some Reflections on the Philosophy of Law," 3 *Cambridge Law Journal* 31 (1927) which is evidently a portion of the paper referred to.

a good many of Pound's "objective" results turn out on investigation to be derived either from an unconscious expression of need he feels, or from the way in which he classifies his material, the assumptions of classification not being tested. The whole paper was a superb *tour de force*, witty, eloquent, and full of curious knowledge. I was particularly struck by a devastating attack on Stammer which in general seemed to me unanswerable. Minor events were a visit to Manchester and one to Coventry. On the first I had a delightful evening with Alexander the philosopher, whom I have known and loved ever since I was a boy. He was discoursing on his spiritual history and interested me greatly by saying that what first turned him to philosophy was reading Hobbes, being certain that he was wrong, and not knowing how to prove it. We had much talk about Spinoza, whom he rates extraordinarily high — giving him a moral insight which only Plato equalled. I launched out at Hegel and argued that much of his reputation depended on his obscurity and that he failed to see that metaphysical speculation is meaningless unless it begins by admitting that its anthropocentricity is proof of its incompleteness; if a worm wrote a philosophy it would have a different scheme of values altogether. Accordingly the only thing we can say about ultimates is that we have no right to say anything. If you guess, that is faith and incapable of proof. A theologian there was angry, arguing that the pragmatic proof of duty is entirely satisfactory. Alexander interested me much by saying that he thought a moral science possible by compiling codes of behaviour and relating successful conduct to generality therein. But, ultimately, he and his colleagues seemed to me to be mystics who want a deified X in their equation as a *point d'appui* when the machinery doesn't grind out the good and the beautiful.

Coventry was a great experience. I spoke there in a lovely 14th century hall with a piece of tapestry at its back which simply defies description. That had some perfect Tudor portraits, one, especially, of Mary Tudor by Zucchini which explains the Elizabethan reaction against Catholicism better than most histories. It was, by the way, amusing to see the satisfaction of the Mayor in an horrific picture of Lady Godiva, their patron saint. For fear of libel, my memory suppresses the name of the artist; but he made Lady Godiva a giantess with breasts like mountains, a fit mate for Gog or Magog; and she sits on a poor little palfrey which would certainly have invoked the Society for Preventing Cruelty to animals, could it have spoken. But the Mayor pointed it out to me with rapture and the Tudor portraits, I gathered, were nothing by the side of this gem. I spoke there with my friend Oliver Stanley,² a young Tory M.P. who is Derby's

² The ancestor of Oliver Stanley (1896-1950) would seem to be Edward Stanley, fourteenth Earl of Derby (1799-1869), three times Prime Minister and always the sharp-tongued critic of those with whom he disagreed.

second son. He told me some amusing stories of an ancestor who held a cabinet post in the sixties. The old boy lived in Westmoreland and was passionately fond of shooting. From August to February he stayed in the North and not even the Franco-German war brought him to town for a cabinet meeting. All the departmental papers were sent him there, and when Palmerston who was Prime Minister, protested at the expense of (I) a daily messenger in a reserved compartment (II) a special coach to the minister's country home, 14 miles from a railway, Stanley replied "One must have some return for serving the country." Certainly those were spacious days; the old gentleman, by the way, got a cabinet minister's pension and on his death it was discovered that he had assigned it in equal parts to (I) his wife (II) his favourite ballet-dancer and (III) the head-waiter at his London club so that a certain port was reserved for himself. His elder brother remonstrated with him for his loose ways of life to which he replied, "Damme, my dear brother, look at Pam; I can't let the P.M. down by being better than he is." He left a will in which a thousand pounds was put aside for the son who could guess which Prime Minister in his period (1830-68) had not committed adultery; and the answer was Peel, who, he said, was "too damned proud to break the commandments; it would have given God a hold over him and Peel never asked a favour from anyone." He really must have been the perfect 18th century nobleman, brought up on the principles of Chesterfield and convinced that the world was made for his personal amusement. Yet extraordinarily shrewd. Charles Greville disliked him greatly and would never go to the Privy Council when the old fellow was Lord President. Stanley said nothing about it and Greville was piqued that his absence was not commented on. He sent an emissary to investigate to whom Stanley replied, "Tell the puppy I never look at my footman's face." But I must not fill this letter with anecdotes.

I have had one or two nice book-finds lately. In Manchester I picked up a beautiful first edition of Spinoza's *Tractatus Theologico-Politicus* for half-a-crown; the bookseller having catalogued it under old Hebrew because of the quotations from the Old Testament. Also I found there Mansfield's copy of Coke's *Institutes* which merely had his name in, but is, I feel, pleasant to possess. I had one big failure. Bracton's *Note Book* is out of print, and I have searched vainly for one. A Coventry bookseller had a copy and I thought the chances were he would not know its value. I enquired the price and was staggered when he said fifteen guineas (it was published at three). I asked why so much; he said, "Well, Professor Laski, I heard you speak last night and I concluded you knew a good deal about books. So when you pick out a modern book from my stock, I reckon it is worth something and I fix my price accordingly." I got him down to twelve but he would not move from that, so I had to leave it,

being sad though wiser in the ways of booksellers. Frida by the way, has picked up an old Persian rug for my study with the inscription woven in "Tread softly upon this, for the maker took pains in weaving it." Don't you think that is charming?

I had a long note from Felix yesterday, full of his crime survey of Boston³ and the incredible Sacco-Vanzetti case.⁴ I hope the latter is settled, for, otherwise, the working-classes will disbelieve in Massachusetts justice.

Our love, as always, to you both.

Ever affectionately yours, H. J. L.

Washington, D. C., December 4, 1926

My dear Laski: A long desired letter meets me on my return from conference this Saturday p.m. I am enchanted with your talk and wish that I could match them — but I have little except personal news. I am worried about my Chinaman Wu who wants to come here for a year or two and get 3 or 4,000 a year, delivering a few lectures. I wrote to Frankfurter who doesn't hold out much encouragement. Wu wants it for his soul's sake connecting it also more or less with me. I have an honestly disinterested desire to help him. I can't help fearing that he may waste himself in deserts of philosophizing — under the, as I fear, too great influence of Stammer — out of whom as yet I have got devilish little — not of course that philosophizing is not the chief end of man — but it is only useful when expended on a copious supply of crude facts — which I fear he may not be in the situation to accumulate. Perhaps having to stick it out, if he has to, will be a good test for the fire in his belly, and if he comes through, his greatest lesson and his greatest triumph. Just as I begin this letter I am shown a long screed about me by Miss Sergeant in the *New Republic*.¹ I rather wince at having a woman talk about me (in public) — but I am surprised at some of the things she had got hold of — e.g. a letter to Bill James giving some notions that later I expressed in print. As to the rest I say no more than that women's rhetoric is different from that of men — and that I hope my friends won't laugh at the praise.

³ The Harvard Survey on Crime and Law in Boston was currently under way under the guidance of Felix Frankfurter.

⁴ On October 23, Judge Webster Thayer, before whom Sacco and Vanzetti had been tried and convicted of murder, had denied the motion of the defense for a new trial. A few days later an appeal was taken to the Supreme Judicial Court of Massachusetts.

¹ "Oliver Wendell Holmes," 49 *New Republic* 59 (Dec. 8, 1926); later reprinted in *Fire Under the Andes* (1927).

I tried a little to turn her from the plan a year ago — and until recently didn't suppose she was pursuing it.

I am reading a book by John Dewey, *Experience and Nature*. Wu put me on to it saying that it was a great book and mentioning that it had amiable words about me. I give you my word that it was this former remark that set me to reading it — and I think Wu was right. It is badly written in the sense that the style makes it more difficult than the thought — but even in the writing it gives me the feeling that Walt Whitman gives of the symphonic. Few indeed, I should think, are the books that hold so much of life with an even hand. If you asked me for a summary I couldn't give more than a page of ideas, but the stimulus and the quasi-aesthetic enjoyment are great — and the tendencies those which I agree with. I have read but half of it as yet for my time is limited. My legal life goes on serenely — a little while ago I wrote a case in which I expressed the result in terms to suit the majority of the brethren, although they didn't suit me. Years ago I did the same thing in the interest of getting a job done. I let the then brethren put in a reason that I thought bad and cut out all that I thought good and I have squirmed ever since, and swore that never again — but again I yielded and now comes a petition for rehearing pointing out all the horrors that will ensue from just what I didn't want to say.² I think the opinion will be altered by a few words that satisfy the majority and that I privately think really mean my principles, and all is serene again. I wish very much I could see Amos's paper that you tell me about. I am afraid that I should agree with it more than I want to — though I have no unwillingness as to Stammler — good man though he be. My love to you all.

Affectionately yours, O. W. Holmes

16 Warwick Gardens, 4.XII.26

My dear Justice: Overwhelming days! But next Friday sees the end of term and I hope then for six weeks of such peace as a bookless house will give. I have finished my book on Communism — a hard twelve months' job done — and await that evil hour when proofs convince you that it was folly to write. But at least I have given it to the publisher on the pledged day and that I take to be virtue.

² It seems likely that the recent case referred to was *International Stevedoring Company v. Haverty*, 272 U.S. 50 (Oct. 18, 1926), the one case at the October 1926 term in which Holmes had written an opinion and in which a petition for rehearing was filed. It appears that no action on the petition was taken. In its decision the Court held that stevedores engaged in loading operations were to be treated as seamen within the meaning of that word as used in the Jones Act. There is good reason to believe that the earlier opinion mentioned by Holmes was that in *The Pipe Line Cases*, 234 U.S. 548 (1914).

We have been out a little. A grand dinner with Sankey to meet the C.J.¹ He's a good classical scholar, but a mean little soul, who lives on trivialities and has no intimate zest for the law. He praised Dunedin much and Sumner a little ("an able dog") but otherwise had nought but jeers for the weakness of X or C. I frankly disliked him, even though he had flattered me by asking to meet me; for I respect fidelity to colleagues even though they are fit for the hangmen. But Sankey more than atoned — especially when he had a great fight with Dean Inge upon Christianity. The Dean isn't very good at personal controversy and between ourselves he doesn't know his texts any too well. And he uses big phrases like "economic law" without any real knowledge of their meaning. The result was a grand massacre which I quite thoroughly and deservedly enjoyed. Then a good party with Charles Trevelyan,² to meet his father, the historian, Sir George. I like the old gentleman hugely. It was a first-rate experience to hear tales of Macaulay from the angle of the favourite nephew; and memories of Palmerston in his prime. He put Pam higher than I should have done and Peel lower; and he was very interesting in his tremendous admiration for Alexander Hamilton. He seems to read very widely, and I was amused at the vehemence with which he trounced one Nock for a bad life of Jefferson he had just read. Then a good dinner with the Webbs whom I find more and more satisfying in their thoroughness and receptivity. They are at work on the history of the poor-law 1689–1835³ and had much of interest to me to communicate. Frida started the hare of who was the best talker they had ever known and I was astonished to hear them say with great emphasis that it was Mrs. J. R. Green. They rated Bernard Shaw very high, but said he was too obtrusive and sulked if he was talked down. I put all this to Birrell last night, and he said he would put Dean Church⁴ first for charm in talk and Liddon⁵ for eloquence; then Birrell-like he added reflectively — "Those judgments must be true for they come from a Nonconformist." I add a tale Birrell told me which I like. He dined at Trinity, Cambridge in 1902 and Butler,⁶ the Master, proposed the health of the College. He referred to the great part Trinity played in the world and added that "it was well to remember that, at

¹ Lord Hewart, *supra*, p. 763.

² Sir Charles Trevelyan, Bart., politician and civil servant.

³ The fruit of their labors was *English Poor Law History* (3 vols., 1927–29).

⁴ Richard William Church (1815–1890), friend of Newman, select preacher at Oxford, Dean of St. Paul's, and historian of the Oxford Movement. He was noted for his telling style as writer and as preacher.

⁵ Henry Parry Liddon (1829–1890), canon of St. Paul's and lecturer at Oxford, who was an intimate and devoted admirer of Dean Church.

⁶ Henry Montague Butler (1833–1918); before becoming Master of Trinity he had been headmaster of Harrow, and dean of Gloucester. See, *infra*, p. 1850.

this moment, both the Sovereign and the Prime Minister are Trinity men." Birrell replied for the guests. "The Master," he said, "should have added that he can go further; for it is obvious that the affairs of the world are built upon the momentous fact that God also is a Trinity man." Butler, says Birrell, never forgave him that.

In the way of reading I have had some pleasant experiences. First I have read Workman's *Life and Times of Wyclif* (Oxford) which is wholly admirable, especially on Wyclif's philosophic views. Then a book by one Catlin of Cornell called *The Science of Politics* (Knopf)⁷ which I do not agree with, because I think it is nonsense to try and make politics an exact science; but I liked the sweep of the fellow's mind and he writes really well. Third I have read a brilliant German book by one Haym *Die romanistische Schule* which is really first-rate and quite exciting. Finally, through picking it up cheaply, I read Hume Brown's *Life of Goethe* which, without being inspired, was thoroughly satisfying. It told one all one wanted to know and avoided lyricism, and one felt at the end that one knew what the fellow was like. But, in the way of reading, I think the most amusing thing was acting as a referee for the Historical Review for a paper sent in (by an Indian) on the corporation. The gent impressed the editor by his immense apparatus of learning — something like 20 notes to the page. I was able to show that it was a mosaic, five pp. of which came from Saleilles, another section from Victor Morawetz,⁸ a part from Michoud, a page from me, and a peroration from Gierke. The gent's own contribution were eight Indian references in his footnotes. *Sic transit gloria mundi*.

Your marks case is very interesting. My colleague Gregory was a witness in a similar one before the Mixed Tribunal here and had no difficulty in taking your view; and . . . the Secretary of the Tribunal, tells me that except for the first year, every case of a contract to pay marks has been so decided. I had not seen that poor McKenna was dead. I liked him because one always had a sense in his opinions of both growth of mind and a genuine effort to understand.

I am not disinclined to agree with what you say about reading. But I am pretty sure that the essence of the scholar is to see the roots of his period pretty far back and to travel along the road. When I get a student who wants to do political philosophy seriously I like to pick out a modern problem of some size and ask him to explain how it came to be a problem. But I find, also, that knowledge of Plato and Aristotle doesn't compensate for ignorance of yesterday's Hansard. I'm not, however, altogether sure that I agree with you about style. I used to revel in Pater; now I find him unreadable and I imagine that many have gone through

⁷ Reviewed by Laski, 119 *Nature* 519 (April 9, 1927).

⁸ Victor Morawetz (1859-1938), American lawyer and author of a leading treatise on corporations.

my experience. Yet it is a great style in its way. On the other hand few things are as ugly as the style of Kant or Hegel and yet the mind of each is irresistibly big once you sit down to them. Admitting all the glories of simplicity and clarity, isn't it true that there are things so complex that one can't be either simple or clear about them without violating the material? I tend more and more also to the view that the big man in each age is the man who asks the new questions it is in a position to answer if asked. Literature ought to be divided into what pleases and what destroys. The first is eternal if it deals with ultimate things; the second passes; but it is bigger because it clears the path.

But I must end and go to bed. Our warm affection to you both.

Ever yours as ever, H. J. L.

Washington, D. C., December 15, 1926

My dear Laski: Your letter just arrived worried me a little as it seems to impute to me views that I cannot have meant to express as I never entertained them. 1. When I speak about the literature of the past in flippancy terms I expect to be taken humorously, of course. Because, although I think that if we are sincere with ourselves we get much more first hand pleasure, yes, and profit, from the books of our own time, I deem it almost essential to our own thinking to understand its genesis, so far as may be. Certainly I have spent a good deal of time on books of other centuries and I don't know what I should be without it. Also I am far from denying real pleasure derived directly from past literature — apart from thinking about it. I am inclined to say that the greatest literary sensation I ever had was in reading Dante (with a translation along side) — in spite of all that I disbelieve, smile at or abhor. 2. As to style — never can I have said or implied that simplicity and clarity were what I most or even very highly value as compared with other things. I quite agree with what Harry James said to me in our youth — that many things have to be said obscurely before they can be said clearly. When a man is perfectly clear he is talking what is commonplace to him — when the effort of thought to him is over. I think I said and I think that the main element of style properly so called is sound — but that is a different matter — and may be no more than a question of how one uses words. As to clearness — I have just read a book by John Dewey — on Wu's recommendation — *Experience and Nature* — of which I could not have summed up a chapter or a page — and which I should find it hard to give any intelligible account of, yet which — to my surprise — I thought truly a great book. I mention that he quotes me in it as one of our great American philosophers, and pleased me thereby no little, only to say that that

was not why I read it and is not why I think it great. I think it so because with all its defects of expression, he seems to me to hold more of existence in his hand and more honestly to see behind all the current philosophers than any book I can think of on such themes. But after him Henderson on *The Federal Trade Commission* is an easy task — although I golluped up the former with enthusiasm and do the latter as a useful task.

I shouldn't think Birrell would have dared to make his joke about God being a Trinity man in a speech such as you describe. I am delighted at what you say was said about Mrs. J. R. Green. I am very fond of her — although I haven't seen her since I last was in England and have heard from her but only rarely. I stayed with her a week when she lived facing the Thames above the House of Parliament and had an adorable time. She is a heroine as well as a very gifted woman. Dean Church and Liddon are only names to me — but I suspect they could not be the types of what I admire. Bowen was a good talker — but he turned off serious subjects with a story. Wm. and H. James were pretty near superlative in their respective days — Bill more especially I think.

We sat on Monday to accommodate lawyers who had come from a distance — and then adjourned for three weeks. I had but one opinion to write — which I circulated this morning and my other work is done. If I don't feel bound to go to the dentist to be looked over I have some happy leisure ahead. I mean to make my wife inspect me and see if she can see any reason for my going. Dentists should be treated as I read in my youth that embalmers were in Egypt when their dirty job was over — pursued with stones. But on the whole I seem to have reached for the moment a sleeping equilibrium — too soon to be upset I fear. The army taught me some great lessons — to be prepared for catastrophe — to endure being bored — and to know that however fine [a] fellow I thought myself in my usual routine there were other situations alongside and many more in which I was inferior to men that I might have looked down upon had not experience taught me to look up.

Ever affly yours, O. W. H.

16 Warwick Gardens, 18.XII.26

My dear Justice: A fortnight has elapsed since I wrote last, and I am full of apologies for not writing. But I have been busy with two things. First the government appointed me arbitrator in a dispute as to whether miners not yet taken back to the mines in Durham were entitled under the Act to unemployment relief, and I had to go North for three days and hear argument. Then, an uncle of mine died in London, and, my father being

in India, I had to make all the arrangements about his funeral and the inquest (he had a sudden heart attack) which took time once more and was rather nerve-racking as I am unaccustomed to these things.

The Durham experience was very interesting. The Act says that no man who is "unemployed as a direct result of a strike or lockout shall receive unemployment relief": *quaere*, after a settlement when the men are ready to work what is the meaning of the word "direct"? The government argued that it meant a condition which made the pit unable to give work to all its former employees. Appeal was taken by the men and both sides agreed on me as the arbitrator. I had little difficulty in holding that "direct" meant only during the continuance of a strike or lockout and that once an agreement to resume work had been made between the parties unemployment was indirectly connected only with the strike or lockout. I amused myself by making the basis of my decision an early opinion of the present attorney-general¹ who had so held in the previous Baldwin government (1923) — an opinion which counsel on both sides had completely overlooked. So I took the high line and said that though I thought a similar decision could be reached on ordinary canons of statutory construction, I preferred to rest upon the applied instructions of that eminent lawyer, etc. The satisfaction is that six thousand men will receive eighteen shillings a week until the pits can be got to full work again.

I read with a good deal of pleasure Miss Sergeant's piece about you. There were things I should not have said, and there was a sort of staccato rhetoric I did not like. But on the whole she said much that is wise and true; though I should have liked certain remarks of Maitland and Leslie Stephen to be quoted. And I should have said that your influence on *les jeunes* came from the fact that you wholly lacked complacency about position which enabled you to argue on the basis of intellect and not of eminence. And I should have added that — *teste* H.J.L. — you have the supreme art in friendship — the gift of talking through silence. But on the whole she did well. I of course pride myself that I could have put in the intimate touches she missed. That is of course my vanity.

You worry me a little about Wu. I should have said that he was off on a wild goose-chase. A man who is *in medias res* can't expect to have the carpet rolled out for him. His job is to stick to his last and make leisure. Obviously he has brains, and, not less obviously, he is badly needed in China. And Stammler is likely the better to fade away there. Of course I don't nowadays know the openings for his like in America; but I should guess they were few.

Since I last wrote I have made one or two pleasant purchases. The best

¹ Sir Douglas McGarel Hogg (1872–), first Viscount Hailsham, subsequently was twice Lord Chancellor, 1928–1929, 1935–1938.

are the works of one Richer² of whom you probably have never heard, but who revived Gallicanism in France in the early 17th century and made possible the movement of which Bossuet and the Declaration of 1682 are the outcome. My set (bought from the catalogue of a bookseller in Nice) belonged to the Abbé Grégoire³ whom you may remember as a priest who went over to the Revolution and had much influence in those times. Also I bought a quite fascinating attack on Rousseau's *Émile* by a Jesuit contemporary which accuses him of wholesale plagiarism and certainly drives some points home by references to contemporaries now forgotten. But my best find was in a book-box in Kensington. One Lange wrote a *La Bruyère, critique sociale* which, though published in 1909, is terribly scarce and costs five or six pounds. I have searched for the last three years for a copy but in vain. Now, yesterday, I walked up Church Street, Kensington, and this, uncut, was the first thing I saw in the sixpenny box. I almost feel inclined to give it a dinner in celebration.

We are still working away at the new house. But I hope that the first week of the New Year will see us safely removed thereto. I have all the books on the shelves, though without arrangement; and I expect to spend next week trying to bring some order out of the chaos. May I give you the address, and ask you to write *there* after you receive this. It is Devon Lodge, 5 Addison Bridge Place, W. 14. I wish you could see it, for with its tricky little Adamisms brought out, it is becoming a charming little cottage.

Of reading I have done but little. I took a couple of volumes of Horace Walpole to Durham, but I liked the letters from Mme. du Deffand to him better than his to her. But I have reread Boswell with joy unutterable. It is, I think, a mistake to dip into him; it's the whole picture that is the thing. I like, by the way, the story in Birkbeck Hill's notes of the meeting between Johnson and Adam Smith: J. "Sir, you are a Whig dog." A.S. "Sir, you are the son of a whore." I wonder if five people lived in the 18th century who dared to say that to Johnson's face. I read, too, a grand detective story which I recommend very strongly — *The Three Hostages* by John Buchan. If you liked *The Thirty-Nine Steps*, you will like this. And I commend strongly *The Legacy of the Middle Ages* by a group of writers, with quite charming pictures and half-a-dozen admirable essays. Also, have you ever read the works of Thomas Deloney? He was an Elizabethan who wrote novels for the ostler and the 'prentice; I think he is really remarkable and there is an insight into character which makes him well worth the price of admission. The Oxford Press have an edition

² Edmond Richer (1560–1631); author of *Libellus de Ecclesiastica et Politica Potestate* (1611), a vigorous defense of Gallicanism.

³ Henri Grégoire (1750–1831), Jansenist advocate of a Gallican church.

and I wish you would have a peep at him in the Library of Congress.

Our love to you both. And may 1927 be all that it ought to be.

Ever affectionately yours, H. J. L.

Devon Lodge

5 Addison Bridge Place, W. 14, 29.XII.26

My dear Justice: A joyous letter from you was a relief in the turmoil of moving house. In the last ten days I have arranged over five thousand books on shelves, and I never realised how impish they are until I tried to unpack them. The third volume of Montaigne insists on hiding itself behind the fourth volume of Gibbon; and it is impossible to recognise the eleventh volume of Carlyle upside down. However, they are done, and my room is almost in working order. But I never, no never, want to move again.

I don't think I dissent from your remarks on the classics, so long as the emphasis is clear upon the value of knowing why we have come to think as we do. And much of the older literature seems to me vastly overrated. I get no pleasure from Ovid, little from Pindar, and not much from the Latin historians outside Tacitus. I think the Greek orators enormously overrated. I could point to half a dozen speeches by Bright and three or four by Lincoln that seem to me every whit as good as the best ever got off by Demosthenes. I do enjoy Seneca and Cicero, especially the Cicero of the letters. And I think pieces of Sophocles and Euripides go with certain pieces of Shakespeare and Shelley as the embodiment of what is most superb in the human spirit. But I am pretty clear that I would give most classical literature up quite gladly for Dickens, Balzac, Shelley, Thackeray, George Eliot, and Maitland. And if someone could write about our times as Carlyle lectured to his, I'd put him among my gods as well. The past is only useful insofar as it aids us to be genuinely our contemporaries; otherwise, I'd rather read the last good detective story and have done with it.

Since I wrote last week not much has happened. The most interesting thing was a dinner at Haldane's when he and the Prime Minister and I talked confidentially for a couple of hours. You can't help liking Baldwin. He is far from intellectually first-rate, but he is *good* — a kind of Colonel Dobbin to whom you could turn with your troubles and be comforted. He interested me much by saying that Churchill was quite the ablest, and Bonar Law the shrewdest, mind he had encountered in politics. He had a high opinion of your present Ambassador Houghton;¹ and an amazingly low opinion (this between ourselves) of his predecessor Kel-

¹ *Supra*, p. 700.

logg.² After our business talk we settled down to this kind of gossip and one story I must not omit. A canonry of Westminster fell vacant. Three hundred clergymen wrote in to him, urging their claims. He was impressed by one man who forwarded a list of his books which looked most formidable from their titles and said that he would not have ventured to ask for the post had it not been that access to great libraries meant everything for the future of his work. On enquiry it turned out that books with such titles as *Progressive Redemption*, *The Church in the Sub-Apostolic Age*, etc. — altogether thirty of them — concealed a lunatic who was devoting himself to proving that the British were the lost Ten Tribes and the Kaiser a Jew.

It being Xmas week, my reading has been light but excellent. The publisher sent me a one-volume Pepys, charmingly illustrated, and I fell completely under his spell. Really he is better than Horace Walpole, for he still knows how to take delight in things and lacks the pose of *ennui*. For I declare with my hand on my heart that no one with any brains is entitled to *ennui* in a world as interesting as this one is. I told a clergyman who dined here the other night that the great mistake of religion lay in its refusal to build upon the small daily incidents — the joy of finding a rare book, the unexpected visit of a dear friend, the contemplation of a picture. But he dwelt on the heights of prayer which has always seemed to me a first cousin to blasphemy. If I went to church I should, I fear, like Pepys, be interested in the pretty lady just behind the third column on the left. I reread, too, in bed *Felix Holt*. Have you read that in recent years? It is really very moving. Also a delectable story by one P. G. Wodehouse called *Piccadilly Jim* which I urge you and Mrs. Holmes to chuckle over. I made Frida read it, and last night was awakened by shrieks of laughter from her bed. She had wakened up and recalled one of its incidents which almost reduced her to hysteria.

Have I (I think not) told you of my delectable book-find. One Lange, in 1909, published a *La Bruyère critique sociale* which is an invaluable commentary not only on him, but on French social life in the 17th century. It is now what the dealers call excessively rare and the only copy offered to me in the last three years was 450 fr. which I thought too much. On Xmas eve I went to Mudie's where there was a sale of foreign literature and there I found this treasure for two shillings. And for five, I got Atlay's *Victorian Chancellors*, a delightful book for bed-reading, and a photograph of Leslie Stephen by Mrs. Cameron³ which would really make your mouth water. I must say that some of those Victorians did

² Frank Billings Kellogg (1856-1937), American Ambassador to England in 1924 and Secretary of State in the Coolidge cabinet.

³ Julia Margaret Cameron (1815-1879), friend and photographer of illustrious Victorians.

look the part — though, also, some of them, like Henry Taylor, looked better than they were. And that reminds me that I have two most wonderful pictures of Hobbes — about 6 x 6; would you like one? They are quite small, essentially things to stand on a mantelpiece. But I know few heads quite so massive or so inspiring. I have been going round the National Portrait Gallery, and I was enraptured by Hobbes, Selden and Locke, beyond all others. I liked Newton, but thought him curiously effeminate. And the picture they have of C. J. Fox seemed to me the finest personification of good nature I have ever seen. Do you know it? He has a vast hat in his hand, and a belly (it is *not* a stomach) that is definitely Gargantuan in its splendour. Another thing that struck me there was the almost feline cruelty of Jo Chamberlain's mouth. But this needs an essay not a letter.

Our love as always to you both. *Ever affectionately yours, H. J. L.*

Washington, D. C., January 1, 1927

My dear Laski: A happy New Year to you and yours. Your last letter has some remarks about Wu that please and relieve me. I had felt and written to him in the same general direction. I cannot see the profit that Stammer has been to him except as he may have introduced him to other philosophic reading. I don't tell him that, but I did hint that contact with actualities might be better for him than easy philosophizing in comfortable circumstances. I am a little afraid that he may feel as if he had more to say than he yet has in fact, as some of the things he has sent to me seemed to be statements of the well known with a feeling of discovery. When a man *realizes* a truth he feels as if he had discovered it. I have seen the same thing in others — and am not sure but I haven't caught myself in the same illusion. I say your judgment relieves me, for I much desire Wu's welfare and have asked myself whether I ought not to bring out some appreciable sum to help him to his desires. I don't think so — but one is suspicious of oneself.

I have little to report in the way of reading. Since finishing Dewey's book and a law book by Henderson on the Federal Trade Commission so many things have come in to be done including an opinion to write and many to read, that I haven't had much time. A *Life of Loyola* by Sedgwick is the only item I think of. Very well done I should think, but beyond the desirableness of not being blankly ignorant I don't care a damn for Loyola. A martyr's efficiency on postulates blindly held that today one doesn't even respect. There is something of that even in Pascal, but with Loyola it seems too childlike and childish. Loyola was a hero. Hell is full of heroes. I feel as I did when the late McCabe

(a friend of mine from Richmond)¹ began to talk about gentlemen. I told him nobody could know whether he was a gentleman or not. The question was whether he was a breech or a muzzle loader. If the latter he might get on a pedestal and feel as large as he liked but the world would pass him by. I mean by the world the few thousand men in the principal cities who as Bourget says constitute the civilized world.

On Monday we begin to sit again and I expect a hard month. But everything is done up to now and the year opens pleasantly and hopefully. I hope my brethren don't make allowances for me as an old man, but they are very pleasant and kind to me, and I feel happy with them. Also conscience made me go to the dentist and after worrying me and doing some work he let me go and I don't mean to go near him again until I have to. I believe Congress has increased our salaries, which I am glad of although I have enough now.² I couldn't live as I do on my salary. And as no doubt I have said before I think an intelligent and regulated avarice is one of the vices to be recommended to the old. There is no headache in it. But the great thing is not to have to think about the matter, and I don't. I couldn't tell you with certainty what my present salary is, and I never on either bench stirred a finger in the matter of my pay. I have been too happy to do the work.

Every good wish to you all.

Affly yours, O. W. Holmes

Devon Lodge, 11.1.27

My dear Justice: Vacation is over, and term has begun, quite the hardest term of the year. But it is over with a flourish. We have finally moved in here, and, practically, everything is straight; decorators feebly linger in odd corners, but even the stair-carpet is laid and I feel morally complete. It looks as though we are going to be well satisfied with the house. It is smaller than the other and more compact. But it has much more character and charm, and it gives both Frida and me studies that are amazingly attractive for the purpose of work. I can write with you and Felix, Maitland, Brandeis and Morley gazing not without benignity upon me, with Mill, Hobbes and Locke near at hand. With such omens who could fail to do good work?

We were both rather tired after the exertions of moving in. So we went down last week to the Webbs for a couple of days, and had a most pleasant time. Their virtues, if I may so phrase it, have to be dug for; but I rate them high. They are open-minded, convinceable, eager for new

¹ *Supra*, p. 322.

² In February 1927, a bill was enacted increasing the annual salaries of Associate Justices from \$14,500 to \$20,000.

knowledge, and warm-hearted. She has a curious love of religious mysticism and an unsatisfied appetite for religious ceremonial which baffle me a little, as also certain relics of society judgments of the eighties. For instance she regards Balfour as a significant person, apart from politics, where I should judge his work significant in a statesman but otherwise mediocre. We discussed all manner of things, agreeing that George Eliot was the greatest woman in the 19th century and that Mrs. J. R. Green was the best woman conversationalist of the last thirty years. We enquired why Haldane was so good at most things and yet not superlative in anything and I heard, for the first time, the story of his engagement: the lady, a typical society butterfly, turned him down because the then reigning "great dame" Lady Londonderry sneered at him for not being a hunting man. Could anything be more English? Of other things I tried in vain to persuade them that Scott and Byron had qualities of permanence and that there was rarely any point on a book about methods of social investigation. This last I believe is most important. Anyone who researches has, if he has a real contribution to make, to find his own sense of values in material, and I believe all the rules that truly count and most of the alien experience he will find helpful could be put down on a sheet of notepaper like this. But both Wallas and the Webbs have a vast sense of long and painful excursions on things like the taking of notes, the method of personal enquiry, and so on which I believe to be sheer waste of time.

From them I had to go on to Somerset to speak, of which the only advantage was that I saw the ruins of Glastonbury by moonlight, a weird but impressive spectacle. And on Sunday Nevinson came to dinner, back from Bagdad, the Sanjak of Novi-Bazar, Damascus and Palestine. As always he had great adventures as when his car got stuck in the desert and they had to be fed from aeroplanes sent out on a wireless call to Basra. He had a grim tale to tell of the French in Syria, and was prepared to write an epic on the fleas of Arabia. But I think his prize tale was of the Iraqi lawyer in Bagdad who was a student of Western jurisprudence and was emphatic that Mainaust was a great man. Nevinson was stumped until he found that it was the child of a godless marriage between Austin and Maine. The jurist, he said, was a simple soul whose chief ambition was to meet the Lord Chancellor of England whom he fondly believed to be Lord Brougham on the principle, I suppose, that natures so varied as Brougham's are necessarily eternal. Last night, to complete the tale, we went to see the play founded on the *Constant Nymph* and so entitled. If it comes to Washington I do conjure you both to go and see it. A little formless, but it makes one feel the contrast between the unconventional and the artificial as no play I have ever seen.

A very little reading. A novel *Jew Süß*, a translation from the German and, I swear, the finest historical novel since the *Cloister and the Hearth*. . . . An adorable book on *The Saint-Simonian Religion in Germany* by a Miss E. M. Butler which is a brilliant *tour de force* especially anent Heine, witty, imaginative, and about as bizarre a tragi-comedy as I know. Should it come your way, I am sure you will have a great afternoon with it. Also an attractive book by one Daniel Mornet on the French Romantics which gave me *aperçus*, perhaps of the insignificant, but assuredly of the insignificant who knew how to be delightful.

And let me add one thing that has pleased me hugely. A year ago an Irish-American came to me and asked for the loan of ten pounds to get back to America. I liked something in his ways and risked it. Months elapsed and I entered the loan amid the great unpaid. Lo and behold comes back the ten pounds with an admirable letter on American conditions and a pound to give where I please in gratitude. Isn't that admirable?

Our love, as ever, to you both.

Affectionately always, H. J. L.

Washington, D. C., January 18, 1927

My dear Laski: Your last joy-giving letter has had to wait two or three days for an answer because I have been so hard at work — my Sunday job having been to write a decision against a very thorough and really well expressed argument by two colored men — one very black — that even in intonations was better than, I should say, the majority of white discourses that we hear. Your mention of Wodehouse led my wife to try, not yet successfully, to get *Piccadilly Jim* — but also to read to me *Mostly Sally* — which is good sport. *Leave It to Psmith* ("the P is silent" the hero remarks) made me roar. In fact Wodehouse is unsurpassed if equaled by anybody in power to make me guffaw. I note *Felix Holt*. Last night Redlich dined with us and was most agreeable. We talked for four hours which is more than I can stand without fatigue, especially after having listened to four hours of argument in court, but which did not bore me for a minute. Redlich is instructive, suggestive and personally pleasant — altogether a dear. I was delighted by his appreciation of you and Felix. He mentioned as to be read: Gilbert Murray's essays, *Tradition and Progress*, and *Felix Holt* may have to wait for that. You mention Seneca as one whom you enjoy. A morning's ramble through his letters gave me the impression of admirable platitudes of morality with good touches — as when he suggests to his younger friend, that perhaps it never has occurred to him that his slave may be a better man than he. But I decided to let him wait for better days. Of course I should like the portrait of Hobbes — but do you remember the very vivid and,

for England, remarkably well-engraved likeness in the volume that you and Felix gave to me? I always have meant to try to find out who could have done it. The date of the edition is 1750 and I should not have supposed that there was any English line engraver that could have done it at that time—but my dates are wobbly. I had not thought of Chamberlain's face as cruel—but his daughter Miss Beatrice Chamberlain, whom I knew intimately, when she was talking of the conduct of England and met an objection on the ground of morals, at times had a look of cynical unscrupulosity that brought out a wonderful likeness to her father. I think I had the cheek to quote Thackeray to her: "At this moment her ladyship's resemblance to the late Marquis of Steyne became positively frightful." This is after many years and does not purport to be accurate. Zimmermann sent me his *Third British Empire* a month ago—and I haven't acknowledged because I do not know where to address him—have you a notion? Also I have not yet read the book. I should more readily if it dealt with the Greeks.

Also a story, *Green Forest*, with kind remembrances from Nathalie Sedgwick Colby—the authoress—who I find is wife of a quondam Secretary of State¹ and whom I knew—temp. Wilson—but why she should send it to me I know not. I suppose I must read and write—thus runs the world away. I am not getting nuggets of wisdom from the arguments I hear or anything but practice in English from the run of opinions that I have to write—yet I am busy as I can be and am kept breathless till after dinner and solitaire. I agree with you as to *ennui*—and yet life strikes me sometimes as my hobby of prints does—a few superlatives and a finite number of fairly interesting things. How can man take himself seriously when his view of life changes as the wind is south or west? However my view is cheerful now—and would be hilarious were it summer—Rockport—in your little house with you.

Affectionately yours, O. W. Holmes

Devon Lodge, 21.I.27

My dear Justice: I have had a week in bed with a nasty dose of influenza; hence my silence. But I am down today, and to be out again on Monday so that the world approaches normal for me. Your letter was a delight, and I was glad that you agree with my view of Wu's plans. Indeed, were it not for fear of the omnibrooding presence of Pound I think I should whisper that much of the German jurisprudence about which he gets so excited is stuff that a man should take in his stride without putting on one side a definite period of intensive study for it. To be informed by Kohler in five hundred pages that law is part of the *zeitgeist* seems to

¹ Bainbridge Colby, *supra*, p. 312.

me singularly irritating; for it implies that it might be something else which I venture to disbelieve. I add that I am in general rather appalled by the vast aids to research in the social sciences which America is developing. X writes to me that he has been given a fellowship of 3000 dollars to write a report on the birth-control movement in England; Frida, who is the Secretary of the labour party committee on the matter tells me that a full and adequate account of it could be done in a couple of days. Y writes from Wisconsin to say that he is to spend two years in Europe studying comparative personnel administration in the public services. Now (a) the literature on all this is now so vast that it needs digest rather than addition; and (b) personal observation for two years is about ten times longer than the subject requires. I look down the long list of theses being done on these things in American universities and not more than two or three per cent of them seem to me more than the repetition of work already done or the elaborate proof of things too obvious to need proof. Meanwhile the things that really need research get neglected — partly because they are not easy, partly because they require not a peripatetic student armed, *cap à pie*, with letters to all the crowned heads of Europe and Asia, but a man in a room who knows his material and sweats blood to get an idea. But all this may be bad temper. All I can say is that I think the results attained by the new dispensation could be reached at one-tenth of the cost.

I had a good time of it in bed with books. First, I had a long pull at Trollope, always with delight even though I knew every taste of the liquor. Then, with the great interest, I read F. W. Hirst's *Early Life and Letters of Morley*. It's a little too long, as biographies usually are, but it kept me enthralled all the way through. I don't think Morley quite the size that Hirst as disciple does, *e.g.* I do not mention him with Burke. But he was quite certainly the finest Englishman I have known personally, and I think Hirst makes you see why. I was a little surprised at one or two things. Morley's immense admiration for Frederic Harrison means nothing to me. I never, to my knowledge, read a page by him that seems first-rate. And L. Stephen comes less into the picture than I imagined. I should have made a guess that on the side of religious belief Stephen had more influence on Morley than any other person, though less, of course, than the cumulative effect of his studies on 18th century France. And I had the same amazed sense I always have of the way in which obvious and banal speeches by politicians seem to each other epoch-making. That still exists, and I suppose the poor dears believe it. But I am sure that one of the results of being immersed in the actual conflict is to build things on personal influence of which the latter is the effect and not the cause. I don't deny, of course, that men influence events; but I think insiders tend to think that men are mountains

when measurement over the whole map makes them molehills. What is above all curious in the book is the enchantment of Gladstone's personality. Even people like Huxley, who detested him, seem to have felt it; and I know no book which gives you any reason, except vigour of mind, to see in him anything that makes you feel any special moral or intellectual insight. All that he wrote is commonplace; and I cannot see that his speeches are in the same intellectual class as those of Bright. Indeed, the instinct of the contemporary working-man, who doubted Gladstone and clove to Cobden and Bright, seems to me thrice right. There is nothing in him of Lincoln's instinctive perceptiveness, or of the originality of people like Hamilton. Yet, except Chamberlain, all of them are knocked over by an hour of his company; and a great *gelehrte* like Acton never goes into his presence except on his knees. What is the secret? Another interesting book I read was a study of Trollope by one Michael Sadleir. It had all kinds of interesting gossip in it; but what I think amused me most was a review of *The Belton Estate*, one of the simplest and most charming of his novels, by Henry James who declared it to be totally devoid of mind. And I read one novel which, on my knees, I pray you to read. It is called *Jew Süß* and is by a German named Feuchtwanger. I take an affidavit that it is the finest historical novel I have ever read. It's a picture of a German ducal court in the 18th century. To say that is nothing, though its reproduction is a miracle of historic atmosphere. The real thing is the detailed play of character and motive — the putting into action of life as full of sound and fury and signifying I do not quite know what. Buy or beg or borrow it, please; and do not let Mrs. Holmes omit it from her hawk-like purview. . . . I began a vast compilation by Charles Warren on the history of your Court, but I did not find it was made for bed.

Well, next time I hope to be about the world again and able to write more sanely. Yet this, as you know, brings my love and greetings *more antiquo*.
Ever affectionately yours, H. J. L.

Washington, D. C., January 28, 1927

My dear Laski: When a man has been husy — pronounce hizzy — which abridgement I use for hurriedly busy — he is cramped at the end and can't expatiate at once — at least I can't. I think you can, so that fact and the hope that I may not be too late to catch tomorrow's boat — imagined by me, since before the war, to sail on Saturdays — will lead me to be short. We have adjourned and I am hoping for 3 weeks of leisure — though the C.J. dangles a political case over my head. Fired by Gilbert Murray, Euripides is on my table once more, and, who would have thought it? Ovid. He, G.M., says such pretty things about him (O).

I, with you, had postponed Ovid to my Xth eternity and after I should have written my work on Anthropology (1st Aeon) — mastered Mathematics (2nd Aeon) and other unconsidered tasks accomplished, should take up literature. The whole of which I suppose would take but a few years.

I agree with you as to Balfour outside of politics — a very agreeable man but I thought his books one for ladies' centre tables. But then I am afraid that I once told Bill James that his discourse on free will would please the ladies and unitarian parsons. I remember once complimenting a young lady to Haldane, having understood that he was attentive to her, or had been, but he thereupon spoke sardonically of how young women talked about books on the strength of having read reviews, etc.

Again I agree with you on the *methods* business. I have no use for them. Taking notes, keeping diaries, etc., etc., may suit methodical minds, they don't suit me.

I told you how I liked to hear Mrs. J. R. Green praised. She is a great friend of mine though it is long since I have heard from her. When you see Nevinston again remember me to him. I envy you for seeing him.

I have done nothing but write a little law, read a lot of applications for *certiorari* and opinions by others, etc., but hope to do better by my next.

As I write this there is brought to me the life of Bernal Diaz del Castillo by R. B. Cunninghame Graham. Tommy Barbour lent it to me years ago, a chap that was with Cortez and tells a marvellous tale. To my joy it seems to have been reprinted though not marked 2d edition. As I remember it a priceless book.

Affly yours, O. W. H.

Washington, D. C., February 4, 1927

My dear Laski: Your letter of the 21st reached me yesterday when I was distraught with details — paying my income tax, fussing about a registered bond, expecting your Ambassador¹ and his wife (pleasant creatures — she suggestive of Mona Lisa to me) at luncheon and a call to be made afterwards. This morning finds me free and serene. You speak of Wu — a letter a few days back informed me that he had been appointed judge of what seems an important local court² — so I expect that his yearnings will be appeased for a time. I do greatly desire success for him and have great hopes. He never mentions local disturbances. He seems to live in his world of thought. As to Frederic Harrison and Glad-

¹ Sir Esme Howard (1863–1939), later Baron Howard of Penrith, was British Ambassador in Washington from 1924 to 1930.

² John C. H. Wu had recently been appointed a judge of the Shanghai Provisional Court.

stone I agree with you. I talked with both of them. F. H. when I first saw him was a Comtist — I always supposed his good English was one cause of his standing. The only thing I ever learned from him was to turn from Hobbes to Bodin — but that was something — before the days of Figgis — *ni fallor*. Gladstone had a voice like Emerson's and in '66 seemed to me the one man who was like an American. He came out to meet you and had gusto — but, bar his financial speeches of which I can't judge, I never read anything of his that didn't impress me much as Roosevelt did when he ventured into the higher reaches. I seem to remember a discourse by T. R. which the N. Y. *Sun* pronounced great but of which Rémy de Gourmont made as it seemed to me deserved sport.³ Possibly I have mixed up two deliverances but I am pretty sure that they were *eiusdem generis*. Also my Secretary who knows more about it than I, agrees, as I have every inclination to, with what you say about the expeditions of students for research, from here. He says they take any theme, the easiest, that will give them a visit to Europe.

I am rereading John Dewey's book — *Experience and Nature* — with the same opinion as before — but with some mitigation as to his style. There are moments that suggest that he could write well — but then comes obscurity. Still there is very little that I have not articulately grasped as I went along, though I shouldn't like to be called on to recite. I think it a profound and illuminating work. I am not sure that you would agree, but I shall stand firm. But I get up rather late and go out to drive from 11:30 or 12 to 1:30 and am apt to get a snooze in the afternoon — and after 9 p.m. play solitaire and listen — so I don't go ahead at your pace — even if I could read as fast which of course I can't. I have a delightful book on *Fishing from the Earliest Time* by William Radcliffe — sometimes of Balliol College, Oxford which I read some years ago and which I may reread. G. Murray's stimulus was short lived. I couldn't but believe that he read into the *βᾶννα* things that weren't there — and although he made me appreciate the reasons for Ovid's long reign, a reading of one book of the *Metamorphoses* was enough. I appreciate the felicities but I couldn't go on reading silly stories merely because they had been taken seriously by people — who couldn't get Dewey and who would have burned him if they could have — or because they were a good lesson in style.

The time has come for me to go forth and so I will wind up abruptly with eternally springing hope that this will go tomorrow — and carry my remembrances.

Affectionately yours, O. W. Holmes

³ The reference is, perhaps, to Rémy de Gourmont's observations on Roosevelt's address delivered at the Sorbonne in 1910 during his zestful European trip; Rémy de Gourmont, *Épilogues, 1905-1912* (1913), 162.

Devon Lodge, 13.II.27

My dear Justice: I am humbly apologetic for so long a silence. But for the last four week-ends I have had to be away at Oxford, Cambridge, Rugby and Nottingham and they have eaten up my time. They were very interesting; but I was left with one or two impressions which I hazard for discussion. I am sure, first, that it is excessively bad for dons to live the cloistered life. They lose all sense of proportion and they get to loathe contradiction. Moreover absence of contact with the great world outside makes them magnify the inconceivably little into the enormously big. One don at Oxford entertained me (quite unconsciously) for an hour with an involved tale about a struggle with the University Press over the size of Greek type in a forthcoming text of Lucian; and he must have literally exhausted the vocabulary of vituperation in his anxiety to prove his point to me. At Cambridge a charming fellow at Magdalene was eaten up with indignation because another fellow of the college had changed his first name to acquire an inheritance; that seemed to him to take an undue advantage of one's parents. I indicated humbly my willingness to change my name for a worthy sum to which his angry retort was that like every damned radical I had no regard for tradition. Of Rugby and Nottingham where I had to speak to workers' classes I was distressed by the tendency, especially of the university speakers, to idealise the working man and to attribute to him virtues and interests in which other classes were held not to share proportionately. It was, for instance, regarded as cynical on my part to suggest that the main hope of the working-class was either unknown or broadly a hope of ceasing to be the working-class. And when I said that the phrase "emancipation of the working-class" was meaningless without a schedule of details they obviously thought me a flinty person lacking in heart. My chairman, the professor of economics, was hugely cheered, for, as I put it, offering Gardens of Eden for twopence a dozen; and my denial of a royal road to learning was not popular.

In between, I have done a little dining. One most pleasant dinner with the Swedish Minister¹ to meet Austen Chamberlain. The latter is a curiously wooden person, who talks on stilts and never ceases to be foreign minister. Ramsay MacDonald, who was there too, shone by comparison. But what amused me most was Graham Wallas's effort to explain to Chamberlain how he could improve his thinking by exploring his foreconsciousness in the early morning. The scene was beyond words. Wallas in deadly earnest, Chamberlain without the remotest knowledge

¹ Baron Erik Palmstierna (1877-) was Minister in London from 1920 to 1937 and author of works of political and religious subjects.

(a) of who Wallas was (b) what his foreconsciousness was, and (c) anxious not to be dragged into discussion of this deadly unknown, and Wallas determined that his victim should not escape. Then a jolly dinner at Haldane's of a little committee we have on trade union law. I have never seen Haldane to better advantage, for here we were in the realm of detail and he showed his real powers as a legal administrator. As a rule, he suffers from a passion for vagueness and incoherency, but that night he was certainly a big man. Your friend Jenks, who was also there, was quite admirable too and enlivened by a certain dry humour which pleased the trade union officials greatly. And I had a jolly dinner with Nevinston who told me of his adventures in the desert near Mecca. At one point they got stuck in the mud for four days and had to wireless to Basra for food. This was brought them by aeroplane and dates and bread were dropped therefrom. "At last," said Nevvy, "I understood how the Israelites got their manna from heaven."

Of reading there is not much of excitement. I reread Whitehead's *Science and the Modern World*, with even more admiration than before, but with a still complete inability to know what the chapters on God and Abstraction are about. Also a quite charming book on the *Romantic Movement in France* by one Louis Reynaud with a particularly interesting discussion of the influence of Swift on Voltaire. And a book on Spinoza by one Brun[s]chvig which sent me back to F. Pollock's book with a satisfied sense that it is quite easily and preeminently the best account of Spinoza there is. I think possibly today one would emphasise more the influence of Spinoza on Hegel, and the significance as a mode of thought of the geometrical method. But, otherwise, I have nothing but admiration. I must not, either, forget to add that I read after many years Wilamowitz's *Aristotle* and thought it a mighty book. Of novels, nothing worth mentioning except a shocker by Agatha Christie called *The Big Four* which would be a good accompaniment to solitaire.

You seem to have had a heavy time recently; and I was relieved enormously by the Court's decision on the Senatorial power to investigate,² though I thought Jim Landis had already made an unanswerable case thereon in the *Harvard Law Review*.³ I am sending to you in April, my friend G. P. Gooch, the historian, whose work you will know, but whose charm and sweetness you have still to taste. Wallas, by the way, leaves for America on Tuesday and is, I believe, to live next door to you for some months. Do look into his mind and tell me your thoughts.

Two items of news I reserve to the end. I may go out to Wisconsin

² *McGrain v. Daugherty*, 273 U.S. 135 (Jan. 17, 1927). The Court, without dissent, reaffirmed the Congressional power to conduct investigations.

³ James M. Landis, "Constitutional Limitations on the Congressional Power of Investigation," 40 *Harv. L. Rev.* 153 (December 1926).

in the spring of '28 for a couple of months; if so, I shall have May in Washington and hereby provisionally engage your evenings in advance. Second, you will be glad to know that Leslie Scott has been made a privy councillor. I hope that is a prelude to something more substantial.

My love to you both.

Ever affectionately yours, Harold J. Laski

Washington, D. C., February 25, 1927

My dear Laski: A letter, most interesting, as usual, comes from you to enliven the first week of a sitting, in which as yet we have encountered nothing very exciting. I should think that what you say about the dons was human nature everywhere and marked in England. I am more than pleased at your attitude about the working-man and the royal road to knowledge. The eternal effort to discover cheap and agreeable substitutes for hard work and talent has been the object of many sneers from me. I thought skirt dancing when it appeared years ago a type. To evoke the hope that you were going to see more the next high kick was to take the place of the laborious gymnastics needed to make a *danseuse*. Some of the modern painting strikes me in the same way — although I am told that certain authors of what seem to me monstrosities are masters of the whole business. Of course I have thought the same way as to the working man. I am sorry at what you say about Austen Chamberlain — I haven't seen him since he was young — and then only casually. But his sister was a very dear friend of mine and I should like to believe the best of him. The scene between Wallas and him must have been amusing. I hope I shall see the former — and also Gooch. I hope also that I shall be here to welcome you in 1928 — but as I shall be 86 about the time that this reaches you I don't venture confident predictions. Since my adventures in philosophy and fishing I have read nothing and have tried to enjoy a few moments of irresponsible idleness, driving and sleeping, but I am afraid that I am industrious — an ominous tendency. My wife is reading *Pickwick* to me, omitting the stories and my pleasure is renewed. Next Monday I hope to fire off a few sardonic remarks in a dissent on the Constitutional powers of the States,¹ beyond that I am vacant. And I must stop and go to court.

Affectionately yours, O. W. Holmes

I thought to write more.

Devon Lodge, 24.II.27

My dear Justice: At last I can look forward to an uninterrupted vista; last week-end, when I went again to Oxford, was the final adventure

¹ *Tyson and Brother v. Banton*, 273 U.S. 418, 445 (Feb. 28, 1927).

away until next winter and I breathe again. It has been interesting but tiring, and the great gain of an assurance that this university is the place for me. All Souls, where I stayed this week, is most pleasant and hospitable, but one gets really bored with the continuous round of small talk about small persons, and the deference paid to the good and great is a little painful. For example, at All Souls was Amery,¹ the colonial secretary; we were talking of America and he expressed the view that it was nauseatingly materialist and appealed to me. I said I thought, in that respect, it was much the same as England or France, but being richer could more obviously fulfil its desires. This was just like a bomb-shell. A cabinet minister had been contradicted (which is not done at All Souls') and the conversation was at once turned to the memory of a late fellow on which there could be agreement! Also the adulation of Vinogradoff bored me; I think him an inferior Pound, but he was spoken of there as though he was Savigny and Maine rolled into one. They are a queer set of people with no open windows on the world. One man had spent forty years on the mss of Ovid, of which he is just publishing an account. I asked him if the results were significant, and he said that he had seven important amendations of the usual text. I add that he was happy in his discoveries which possibly should mean silence on my part.

I have bought one or two books I should like much to show you. First, for ten shillings, an exquisite 1556 Aristotle's *Politics* with a text as black and a type as lovely as you can imagine, luxury, of course, but most pleasing. Then a first edition of Diderot's *Pensées sur la nature* which I had never read. It is tremendously interesting especially in its emphasis upon truth as mathematical in its nature — the interesting reaction of Newton. I bought also a complete set (for 7/6) of Boulainvilliers² — the French reformer of the age of L. XIV. I can't say he is important, but he shows one or two interesting things — the persistence of the influence of Hotman's *Franco-Gallia*, the persistence of the idea of fundamental law, and, even more, the influence of Spinoza which he is half-ashamed to confess. Also a fine Grotius in the Barbeyrac edition which is really something of a miracle in the way of skilful and learned annotation, certainly better than any modern edition I have seen. But I add that looking into the text which deals with general political philosophy I don't think Grotius is very impressive. He merely marshals effectively ideas which are the commonplace of his time, and I should argue that Suarez,

¹ Leopold Stennett Amery (1873–), politician, was Secretary of State for the Colonies from 1924 to 1929.

² Henri, Comte de Boulainvilliers (1665–1722), defender, both against the King and the people, of the rights of the noble families — particularly his own. His published works, all posthumous, include *Histoire de l'ancien gouvernement de France* (1727) and *Essai de métaphysique* (1731).

Soto and Bellarmine and, especially in his realm, Franciscus de Victoria are much abler and much more penetrating. Still these are attractive things to have, and they give one an aesthetic sense of satisfaction when they lie on the shelves.

I haven't been out once to a meal since my last letter and the evenings have gone mostly to Spinoza, on whom I have to lecture next week in honour of his tercentenary. I can't say, beyond general exposition, that I have discovered much of any real import. I can, I think, show that he really conceived himself to be answering Hobbes by adopting the latter's principles and using them to diverse ends, and that he really influenced Hume far more deeply than is generally supposed. I must say how impressed I am by F. Pollock's *Life* which is the better the more one knows of Spinoza; and I must drop a hint to you that Spinoza's letters are really extremely interesting and extraordinarily revealing in a way that philosophers' rarely are. I think T. H. Green really failed altogether to understand him and that, in general, he has not been given the width of authority that is his due.

I met yesterday a most interesting Russian barrister who now practises here, and of whom I propose to see more. He was appalled at the technical skill and philosophic ignorance of the average English barrister. He told me a glorious story of having quoted to the House of Lords an opinion of Shaw, C.J. of Massachusetts and being met with a blank stare of amazement and the obvious need on his part to refrain from further development. And one pleasant thing deserves record. In his Russian days he used to buy largely from the famous old German bookseller, Prager of Berlin. After he left Russia and settled almost penniless in London he ordered a book there and received it without a bill. He sent a cheque which he received back with a slip of paper: "Prager doesn't take money from political exiles until they have the chance to re-establish themselves." I wonder of how many booksellers such a story could be told? This fellow, by the way, was a pupil of Mommsen's in Berlin and he said the latter's seminar was a great theatrical entertainment. The class stood while the master made his way to his desk, and anyone of the students who was called upon was so nervous that he would turn white with excitement and one young fellow was so overawed by the great man's acceptance of a correction that he promptly fainted from joy. Those must have been great days! I had an Indian student the other week who asked me to explain to him my theory of political obligation. When I had done, he said, quite simply, that it was sad to think I had spent so much time on elaborating pure moonshine. Which reminds me of a story I must not omit. Two years ago we accepted an Indian student named M——. After six months we got rid of him on the ground that there was no prospect of his ever getting a degree. Later we accepted

an Indian named A——. M—— was assigned to Professor Cannan;³ A—— was assigned to Professor Dalton.⁴ About a month ago Cannan wandered into Dalton's room and found him interviewing A——. He expressed surprise that M—— was still at the School. Dalton explained that this was A——. Cannan insisted he was M——. The resulting investigation showed that M—— *was* A——, and that being turned out under his own name he re-applied (from India) under his family name and being assigned to a different supervisor escaped detection for nearly a year! That is, I think, a great tribute to the ingenuity of the East.

Our love *and* greetings to you both.

Ever yours, H. J. L.

Devon Lodge, 5.III.27

My dear Justice: A delightful, if brief, note from you was heartily welcome. I am glad you broadly share my view of the Oxford dons. *Constat inter nos* that it doesn't apply to special cases, but as a general rule. I think it not unfair. Curiously enough two of quite the best younger men have left Oxford this week for the reasons I tried to set out. I don't think that the atmosphere matters so much if you are immersed in a discipline remote from normal life. But otherwise it is devastating.

Since I wrote last week, all the events of life have taken place, so to say, in the realm of the mind. The main thing otherwise was a dinner with Spender the journalist¹ and one with the Army officers of the School. The first was the usual gloom about the state of the press with which W. Lippmann will have made you familiar, diversified by some wonderful anecdotes about Northcliffe. The best I think was that Spender once protested to him against telling the public (in 1899) that the Boer War would be over in a winter campaign. Northcliffe simply had in the circulation manager and showed Spender that his optimism had sent up the sales: "You see," he said, "I am right." The other, in its way, was fascinating; they are all charming fellows, distinguished in their profession, and with all the limitations of their profession I got on splendidly with them especially when it came to explaining to them why trade unions can't be made illegal, and why it is possible to doubt whether God consciously planned the British Empire. One sweet soul said he had

³ Edwin Cannan (1861-1935), economist, for many years a teacher at the University of London.

⁴ Hugh Dalton (1887-) was Reader in Economics at London University from 1925 to 1936.

¹ J. Alfred Spender (1862-1942), liberal journalist; editor of *Westminster Gazette*, 1896-1922; author of numerous books on history and public affairs.

never been a Christian until Foch began his offensive and then he found the conclusion irresistible. I sought to explain that the inference was not direct, but I do not say I succeeded.

Apart from this, the great experience of the week has been reading Winston's two final volumes on the war.² I hope greatly they will come your way, for I know nothing finer or more revealing. He is, I guess, wrong about Jutland, and throughout he is over-rhetorical. But he makes you see the job of directing the war in progress as no other work except Ludendorff that I have read. And he convinces me that in a democracy at any rate you can never get the right relationship between soldiers and statesmen. Either the former are too powerful and try to shape policy (which they don't understand) or the statesmen interfere with technical detail which is beyond them. You must not miss the great description of November 11, 1918 where Winston is gorgeously picturesque on waiting for Big Ben to strike the hour and the vast emotions aroused by the first stroke; of which the point is that Big Ben did not strike that day as it was being cleaned. Poor Winston! Huxley's "beautiful hypothesis killed by an ugly little fact." But he has written a very fine book.

Otherwise I have been reading mainly for lectures, as I have been giving some advanced graduate ones on English political ideas since 1875, and thus rereading Mill, Maine, Fitzjames Stephen, Carlyle and Arnold. Many things strike one, first and foremost the immense influence on them all of Tocqueville, and second the certainty that the events of '48 were a kind of watershed in the century after which you either had faith in democracy or you didn't. Of them all Arnold, I think, had by far the deepest insight and Stephen the most masculine mind. Maine in his own line was I dare say extraordinary; but as a political philosopher I don't think he had gone much further than Tocqueville and India. Carlyle interested me greatly. One simply can't read him without a stir and a throb; yet ask yourself at the end what you have been stirred about and it is very difficult to reply. Duty, the ever-lasting pen, the heroic man, the folly of speech — but except that there is the poetic instinct as no other prose writer of the period had it, and the perception of a man when he met him, I doubt the positive element. I think he killed the influence of Byron which seems the more enormous the more one reads — but killed it for what? Did I, by the way, ever remark to you upon my pet thesis that one of the great lines in intellectual development (modern) is Spinoza — Lessing — Goethe — Carlyle and that this school converges with Montesquieu — Burke — Gentz — Savigny — Maine to form the philosophy and tactic of conservatism? A good deal, I think,

² Volumes III and IV of Winston Churchill's *World Crisis* (1927) dealt with the war years from 1916 to 1918.

could be usefully said by way of illustrating this: and it is surprising how little has been written to defend conservatism of recent times in a philosophic way.

This letter, I believe, will come shortly after your birthday. You know how ardent my greetings are. If my Wisconsin plan comes off, I shall hope faintly to celebrate it with you next year. I have leave for those two months from here; now it all depends on the terms Wisconsin offers. But mingled with my greeting is the plea to you at all costs not to resign during the year. If I may venture to say so nothing you write on the Court suggests fatigue of any sort or kind; and the especial note you strike no one else could. Indeed I doubt whether the kind of approach you make would be made by any one else except Learned Hand and Cardozo and I gather that their elevation is not within the realm of the possible. Hence my entreaties!

One exciting adventure of ours you will like to share. Frida went motoring to Somerset last week and found in a cottage an old oak chest in perfect condition. The man said he would sell it for five pounds. She bought it and when it came home it had a Tudor rose in the panels. So we had a man in to look at it from Bond Street and he acclaimed it is certainly not later than 1580 and in quite perfect condition, worth, he thought, eighty or ninety pounds. So behold us watching jealously all who eye it and with the proper pride of ownership.

Our love and good wishes to both of you,

Ever affectionately yours, H. J. L.

Washington, D. C., March 17, 1927

My dear Laski: An answer to one letter was skipped and one that comes this morning must get but a hasty word. My birthday came in the middle of a lot of hard work and I haven't known which way to turn — let me get a new pen. You speak of lots of things that interest me — what you say of Winston (Churchill's?) book and the troubles between soldiers and statesmen, reminds of Patten (*Development of English Thought*) "the sensualist in the field is always at war with the Mugwump in the home office"¹ — I don't stop to verify but quote from recollection many years old. I always used to say that Fitzjames Stephen was an 18th century British controversialist, and he brings down his bludgeon with a whack. Carlyle I never think of except as an artist. He didn't care for truth as such, but only as it was pictorially available. As old James (the father of W. & H.) said of Mrs. Browning "She uses the name of the

¹ In Patten's lingo the sensualists are the active men of strong conviction — the warriors, priests, and capitalists — while the mugwumps are the speculative and frail intellectuals — critics, not actors.

Divine Being as a pigment." As to the convergence you speak of to form the philosophy of conservatism, I listen with much interested silence.

I have had some cases that interested me — and a dissent in which I had a whack at "police power" and "dedicated to a public use" — as apologetic phrases springing from the unwillingness to recognize the fact of power² — one upsetting a Philippine judgment declining to accept a British judgment in Hong Kong³ — and one very plain one upsetting a Texas Statute forbidding negroes to vote at Democratic primaries.⁴ I have been kept humming and still am — I can say no more now except that I am as ever

Affly yours, O. W. Holmes

Some one wrote to me that it was said that I said I should not resign until God Almighty notified me — (which is a fiction of the papers), and asking what warrant I had for thinking there was one. I did not answer as I thought it impertinent.

Devon Lodge, 20.III.27

My dear Justice: The last fortnight of term ended with a bang. I had something to do every night, and I have never looked forward so eagerly as to the next six weeks. However, I am having a brief holiday in Paris, at one stage, and one in the New Forest at another, so that I may recover freshness.

And these days have been most interesting. First of all I count a visit to Canterbury, where I had to lecture. I had never seen the Cathedral before and it is certainly one of the things that sweep you off your feet. It is not only the vast sense of historical association, but its calm, its majesty, and the paintings *circa* 1150 in St. Gabriel's chapel. The latter interested me enormously for I should have guessed that they show clear traces of Byzantine influence. And I met there a delightful old Canon who was at the meeting of the British Association at Oxford and heard Huxley smite Bishop Wilberforce.¹ He said that the sensation was beyond words, and that on him, as on many others, it was a revelation of moral power such as he has never seen again. The clergy, he said, were like an

² *Tyson and Brother v. Banton*, 273 U.S. 418, 445.

³ *Ingenohl v. Olsen and Company*, 273 U.S. 541. Holmes wrote for a unanimous court.

⁴ *Nixon v. Herndon*, 272 U.S. 536 (March 7, 1927). Holmes delivered the opinion for a unanimous Court.

¹ The occasion was that on which Bishop Samuel Wilberforce (1805–1873), "Soapy Sam" to his contemporaries, sought to refute the impieties of Darwin before the British Association. Huxley, challenged by the Bishop to state whether the ape in his ancestry was on the maternal or paternal side, expressed his preference for descent from an ape to the ancestry of such a bishop as Wilberforce, with such vigor that Lady Brewster, in the audience, fainted.

army in confused retreat, whose commander has failed them, listening to an exhortation from their enemy which they try not to believe is true. I had, also, a fascinating lunch with Winston Churchill where we fought over politics in solitude for three hours. Several things there interested me hugely. (1) The politician's assurance: if I could pronounce judgment on one thing with the same aplomb with which he settled a dozen, I should be very happy. There is not a trace of scepticism in his nature. (2) His sense of values. The scientist, the philosopher, the great artist, are for him children remote from the real paths of life. He has no sense at all of long-term influence. He feels that men don't go into politics for fear of failing there, not because they literally don't want to. (3) The rhetorical character of the political mind. It was very easy for him to slip from close argument into peroration and I was never sure that he really grasped the difference. I went, also, to an admirable lecture on "public policy" by Winfield of Cambridge, which contained one perfect sentence: "Public policy means the best judgment of distinguished men of the world as distinct from persons learned in the law; English judges have regarded their own views as the highest expression of the former category." I met there Roche, J.² who is a charming person. He told me that when he first read Cardozo on *The Judicial Process* it was a bombshell to him; he never realised that things like that went on in his mind. Examination convinced him that they did and he began to explore. At sixty he discovered Maitland and, as he put it, underwent the phenomenon of conversion. I said I wished he would bite the other judges. He replied that most of them were vaccinated against the dangers of speculation by their careers at the bar. In a very different realm I took the chair at a discussion on trade-unionism opened by the secretary of the Trade Union Congress.³ He was very able; but what impressed me most was his explanation of many habits and practices we regard as destructive as the definite relics of the old Combination Acts. As an example of the overmastering influence of dead tradition, the thing was amazing.

In the way of books, I have had some nice finds. Item, a superb copy of La Roche-Flavin's *Treize livres sur les parlements* which throws great light on the whole problem of fundamental law. Then, second, a nice copy of Saurin *Traité de conscience*, one of the best Huguenot defences of toleration with notes in the margin which I believe to be in Bayle's hand. Third a contemporary attack on Voltaire which is one of the jolliest *jeux d'esprit* I have read in some time. It is not often that a theo-

² Alexander Adair Roche (1871-), Baron Roche; Judge of the King's Bench Division, 1917-1934; Lord Justice of Appeal and Lord of Appeal in Ordinary, 1934-1938.

³ Mr. Walter M. Citrine (1887-), later first Baron Citrine, was General Secretary of the Trades Union Congress from 1926 to 1946.

logian (pardon me!) is capable of wit; but this fellow, massing Voltaire's lies and trickeries in a general way, makes them more deadly than he could ever have done by solemnity.

In the way of reading, I have mostly been confined to work. But I read Felix's little book on Sacco and Vanzetti and thought it a neat, surgical job. Also the Webbs' new volume on the English poor law before 1835, which, like all they have done in that Local Government series, is quite masterly. And, breathe it low, a novel by P. G. Wodehouse, called *Piccadilly Jim* in which I thoroughly delighted. I read, too, Miss Haldane's *George Eliot*, which she sent me; but I cannot say it impressed me very much. She seemed always outside her subject. George Eliot was a great woman; but I don't think it is necessary to get excited about *Romola*, which is Wardour Streeter, or *Daniel Deronda*; and it is necessary to say that *Middlemarch* is one of the supreme English novels of the 19th century and quite patently inferior to the great romances of either Dostoevski or Tolstoy. One's life isn't different because of *Middlemarch*; but one is never quite the same after either the *Brothers Karamazov* or *War and Peace*; and I should put *Anna Karenina* only just below those. Which somehow reminds me that I picked up the other day *Contarini Fleming* which I had never read. Dizzy must have had a really sublime contempt for the English nation to publish such stuff, or, alternatively, the most weird attitude to himself of any man who ever stood in the front rank. For it is the weirdest mixture of Behmen,⁴ Cagliostro, Byron, Rousseau, I ever looked at; and except for the light it throws on Dizzy himself, entirely worthless.

Well, I must end. I have to make an index to my little volume on *Communism* — a ghastly job; and I must get it done by tomorrow.

Our love to you both. I expect you are driving by the Potomac to see the cherry-blossom.

Ever affectionately yours, H. J. L.

Washington, D. C., March 31, 1927

My dear Laski: Yours of March 20 just received and read and I was just about to say I had a breathing moment in which to answer, when, as I wrote your name a fat package came from the C.J. to be read. But it shall not stop me. You are right in thinking that I have been driving by the cherry trees and in one way and another trying to be unscrupulously idle for a few days. But it is almost impossible. When law makes no demand some bother of business pops up. However all is going well enough.

⁴Jacob Behmen (or Boehme) (1575-1624), mystical shoemaker whose philosophy assigned to will a position of central importance and emphasized the conflict between opposites, resulting finally in a new unity.

Graham Wallas called here the other day and took luncheon today. I find him a most pleasant creature — so pleasant that I haven't inquired too curiously how much we have or have not in common — in the way of opinions, beyond the general agreement of tolerant and civilized men. Don't talk to me of Huxley. I thought him a boor on the only occasion when I saw him — I would lock him up with Andrew Lang and a few others and put S.O.B. on the door of the cell. *Per contra* Wallas lent me Cardozo's first book and I read it and was reinforced in my conviction that he (C.) was a sensitive, high-minded, delicate dear — but I think your friend Roche, J. ingenuous if the book opened new vistas to him.

I don't get your point as to the effect of the old Combination Acts. On the other hand I also read a sentence by the Treasurer of the American Federation of Labor — that made my heart jump up with joy — and hope that it was true — "Labor and capital are now talking the same language — that of the 'informed economist'" — although he goes on that their differences are still acute. I haven't yet succeeded in getting *Piccadilly Jim*. I have received the *Life of Lord Bryce*.¹ I was fond of him and expect to find it interesting — but it came at a moment when it emphasized what I was reflecting — apropos of Pound — that knowledge is a dangerous diluent of thought. The poison of the sting is thinned out and made innocuous by too large an infusion of facts. One perfectly estimable side of Bryce left me cold — the pleasure he took in the society of admirable people like Charles Eliot who don't open the romantic perspectives of life — yet as I say that, I hesitate — for Charles Eliot wrote "the business of the scholar is to make poverty respectable" — a saying that has comforted me in my day — in the days when I lived on George Herbert's "who sweeps a room as for Thy laws" etc. and Browning's "Grammarians' Funeral." And didn't the good man when I wrote to him on his 90th birthday give me a kind of schoolmaster's summary of myself in four pages quarto — though I said don't answer. Let me walk delicately before the Lord — and it's a rum business — that of opening the romantic side of life. Some men who have done it for me would not be suspected of such a possibility by most of Boston. Old Norman² (you may have known some of the many sons whom I saw bear his coffin on their shoulders), a splendid old Philistine who had fought his way to wealth — Frank Parker³ — the most squaretoed seeming of anglicised yankees — who had a green baize door to his office with "Mr. Parker" on it — was counsel for the

¹ H. A. L. Fisher, *James Bryce* (2 vols., 1927).

² George H. Norman (1827-1900) of Newport, Rhode Island, had made a large fortune in civil engineering and the promotion of water works in the United States and abroad. Following Norman's death, Holmes is quoted as saying that few people he had known "have had so high a pressure of life to the square inch." *Boston Evening Transcript*, February 5, 1900, p. 10.

³ Francis Edward Parker (1821-1886).

Barings and the Cunard Co. etc. — but who had an inner fire that he didn't show often. Decidedly the men who have made life seem large and free would not always be picked out by the crowd.

I take it that Felix's book is a bit of heroism on his part — and I vaguely hear has brought criticism upon him. Naturally I can't talk about it — but it has left painful impressions. Disraeli I know more through Thackeray than himself — though I have read one or two of his things. I thought *Anna Karenina* the biggest ever when I read it — but was bored by *War and Peace*. I suppose I am too old now. They made quite a row on my birthday — which shows that I am *really* old.

Affectionately yours, O. W. H.

Devon Lodge, 2.IV.27

My dear Justice: I got back yesterday from a memorable week in Paris — one of the most intellectually exciting holidays I have ever spent.¹ People, sights, books, all seem to unite to make things interesting. Of people there are some I must mention. At a conference I met Jusserand with whom I spoke about you. He looked very fit and eager, and is evidently most warmly esteemed. He wanted to know all about my visit to you and how you both were and what you were thinking about life. I met, too, André Gide, the novelist. He is amazingly impressive, a queerly interesting mixture of the Huguenot who has met Rimbaud and Mallarmé. Then, too, I had a lunch with Briand² who interested me enormously. He lives in the moment, and yesterday, with him, is ancient history which only the archaeologist will study. He is supple as no persons existing elsewhere. He knows exactly what you want him to say and is skilful in the art of pleasing in a quite remarkable degree. Also René Lalou,³ the critic, a kind of Faguet *de nos jours*, clever, witty, and eloquent. One or two of his phrases, "*historiquement Platon a eu une trop bonne presse*"; "*Bossuet a fait une religion pour des rois*"; "*Le François est né malin et meurt sceptique au sein du bon Dieu*" were admirable. I had all I could do to digest these experiences; and I recovered the sense that few peoples have the French power to play with ideas. They are not, I think, originators; but in subtlety and analytic power they are extraordinarily impressive. I saw, too, some interesting things. First the Exposition Louis XIV at the *Bibliothèque Nationale* — mss of Racine, Arnauld, Saint Simon, pictures, etc. The interest, I think, was in the little things — their intense formal-

¹ Laski's impressions of France are recorded in "A Little Tour of France," 50 *New Republic* 292 (May 4, 1927).

² Aristide Briand (1862-1932) at this time was Minister of Foreign Affairs.

³ René Lalou (1889-), author of *Histoire de la littérature française contemporaine* (1923), and *Défense de l'homme* (1926).

ism, the feeling you had of an overmastering power outside them to which they had to conform. And I met one La Roncière⁴ at the *Bibliothèque* who showed me a thrilling map which he believes (with very strong evidence) to be that out of which Columbus took his plans for America. I went, also, to the Luxembourg and saw some Cézanne which were unforgettable — especially the still life paintings which had a vigour quite enthralling. In the way of books I did very well. I got some great folios of the early lawyers, Guy Coquille, Lebret, Loyseau, one or two more of Jurieu, some interesting Fronde pamphlets, some contemporary anti-Rousseau material, and some stuff on the early history of toleration in France which, when written up, will I think be quite new to the historians. And some modern books were interesting — especially Lalou's quite enthralling *Littérature française contemporaine*. I was struck in meeting the men of letters at the degree to which they are bound up in groups and stick to them. One old professor told me a glorious story of Victor Hugo. The great man used to entertain on Tuesdays and the crowd in the street would stop by the open windows just to catch the sound of the master's voice. One or two general things are worth saying, perhaps. One gets the impression that the Church gains ground — especially among the youth in the universities. The world in general is so confused that they cling to it as an anchor. Also the degree of discredit into which parliamentary institutions have fallen is as remarkable as it is painful. To take a politician as dishonourable *a priori* is commonplace wherever one goes; and one hears continually of the need "*passer par quelque phase d'anarchie à une nouvelle synthèse*." On the other hand I am quite clear that France is on the verge of a great intellectual renaissance. Granted the confusions of the moment, it is the confusion of bigness. Valéry the poet, Gide the novelist, one or two younger men like Dauden,⁵ Giradoux [*sic*], Lalou, are I think, the precursors of a great period. It may be that I respond quickly to a sympathetic environment; but I should say that the next ten years will give France a different intellectual prestige from that of any other country. And in herself she is more at peace. Most of the war-hate is dead; they laugh at us and you instead of sneering; they dislike only Mussolini. Him they flagellate in the comic press and the music-hall and, interestingly enough, always as a threat to peace. I believe that they genuinely desire European appeasement.

⁴Charles de la Roncière (1870–1941), historian and biographer; he wrote of the map in question: *La carte de Christophe Colomb* (1924). According to Samuel Eliot Morison, the foremost authority, there is much reason to doubt the accuracy of La Roncière's belief: 1 Morison, *Admiral of the Ocean Sea* (1942), 134, 143.

⁵Not identified.

Of things read one or two things would I think interest you. Lasserre *Le romantisme français* would show you how the demand for order and authority makes its appeal. Fay's *Panorama littéraire* is a most skilful summary of intellectual tendencies in the last twenty-five years. And Parodi's *Philosophie française moderne* is good. There is, I must add, a tremendous interest in Nietzsche; the shops are full of translations and commentaries. That, I believe, is a good sign for Nietzsche was cosmopolitan and it is a great thing for Frenchmen to shake off their insularity. I add that I have just read Fisher's *Life of Bryce* which I found very dull. Bryce is like the industrious apprentice who always marries his master's daughter and never makes a mistake.

Our love to you both.

Ever affectionately yours, Harold J. L.

Devon Lodge, 15.IV.27

My dear Justice: I hope that by the time you receive this, you will have had a call from Ramsay MacDonald; I wrote to him and to Esme Howard that he should look in on you. For he is a likeable fellow and I think you would have had a pleasant hour.

My main experience since I wrote you last has been a dinner at which I sat next to a genius. He was, I gathered, a poet in his second year at Oxford. He began by asking me if I liked his work; I had, very humbly, to confess that I did not know it. "Perhaps not," he said pityingly "as yet I have only done four things that will live." Then a pause; silence from me; my poet, with an effort, "But at my age Shelley had hardly done more." It is, I think, to my credit that I took him seriously and asked him to summarise his view of life. "The poet," he said, "is a reflection of the world-spirit. When I write, I feel as though I carry all peoples and all experiences in my womb." I said it must be a heavy burden. "Yes," he said, "I try not to be too conscious of my mission. I play bridge for relaxation." He thought well of Dante and Shakespere. Homer, and especially Virgil, were very overrated. Rimbaud was the greatest of Frenchmen — "I fancy myself a twin soul with him" — but no German had ever written poetry. Goethe was without lyrical powers. (He could not read German.) He would never marry. A poet, like the bee, must sip from countless flowers; matrimony must be a tie. I cannot express to you how miraculous he was. He pitied my profession. He told me that "on a low plane" my books were not without merit. He said he was sustained amid material cares by the knowledge of eventual immortality. He had no religion; but he sometimes recaptured an experience in Catullus or Shakespere's sonnets or Sappho so vividly that he was tempted to believe in pre-existence. I keep the final thing for the last. "Have you relatives?" "A father." "What is he?" "The

best known black pig-breeder in Berkshire." I told my hostess that at any time I would break any engagement to be permitted to sit next to her poet again.

Outside of this I have been amiably busy without undue exertion. A wedding of a cousin; a visit to Bradford to give evidence before a municipal commission on the undesirability of a separate university there; a review of Fisher's *Bryce*;¹ and a good deal of reading towards a quarcenary estimate of Machiavelli which I have to get done before the end of the month.² I must not forget to urge you to read a brilliant novel by Anne Sedgwick called *The Old Countess* which has great qualities and a certain Greek economy of line. Otherwise my main joy has been *Don Quixote* which I enjoyed as I have rarely enjoyed a book. I have had a good deal of pleasure, too, from Saint-Simon's memoirs, especially his glorious self-esteem, and his portraits of the people he did not like. But he is like Horace Walpole. You are glad he lived, but very grateful that you did not know him.

I was depressed by the decision of the Massachusetts Supreme Court in the Sacco-Vanzetti case.³ Not only has Felix made me feel that, at the least, a new trial was essential; but also the feeling here is very deep that the whole thing is an injustice characteristic of the American courts, and it is a thing difficult to combat. Frank,⁴ Mooney,⁵ and this in fifteen years is unsatisfactory. It makes me distrust the jury system were it not that Thayer, J. suggests that the average judge is not a whit better. And it is especially disappointing to have it come in a state where judges are appointed and not elected.

I was amused by your remark on Andrew Lang. I met the other day in Manchester an old journalist who had a complete set of everything he wrote and proposed in his will to order them to be burned. I found that he loathed Lang as the most wantonly insensitive person he had ever met. Birrell told me the root of it was passionate ambition on Lang's part;

¹ The review has not been located.

² "Machiavelli and the Present Time," 249 *Quarterly Review* 57 (July 1927).

³ On April 5 the Supreme Judicial Court of Massachusetts announced its decision that it was powerless to review Judge Thayer's most recent action in denying the defendants a new trial. On April 9 Judge Thayer sentenced the two men to death.

⁴ In August 1915, Leo Frank, a Jew who had been convicted of rape and whose death sentence had been commuted to life imprisonment by the government of Georgia, was lynched. Over Holmes's dissent the Supreme Court, in April 1915, on jurisdictional ground had refused to review the conviction of the defendant; *Frank v. Mangum*, 237 U.S. 309, 345.

⁵ Tom Mooney (1885-1942), on the basis of testimony known by the prosecuting officers to be perjured, in 1915 was convicted by the California courts of murder and sentenced to life imprisonment. It was not until 1939 that he was pardoned by Governor Olson and released from jail.

he could not bear to see other people even within sight of success. I take your word for Eliot's bigness. I only saw him once, and was impressed by his vigour and alertness. But nothing I have read of him suggested to me originality or distinction of mind, and I imagine that it was the vivid personal contact that gave him his power. Graham Wallas is a dear, but he is really more self-absorbed than is decent, and constructs lions for himself (which he proceeds to slay) where to other people they seem merely tame cats. At bottom Wallas is a bishop *manqué*. He has the germ of unctiousness and would, I think, like to do good. But he has done fine work and sacrificed something for his opinions. I wish you could meet his wife, who is the real item in the series. She has a mordant though winsome wit which is at once cleansing and devastating. Nothing escapes her — and her defence of him against his own weaknesses is one of the most exquisitely tender things I have seen.

But I must end; for Frida's taking Diana to the country for a fortnight and I want to see that they leave adequately. My love to you both. Write to me soon.

Ever affectionately yours, H. J. L.

Devon Lodge, 23.IV.27

My dear Justice: It has been a busy week; for I have been roped in to help the trade unions in their fight against this incredible Bill of Baldwin's,¹ and most of my time has gone in conferences with lawyers and politicians guessing at its legal consequences and the best way to awaken a public opinion about the issue. It's frightfully interesting; and not the least interesting side of it is the lawyers' sheer ignorance of trade unionism. You may remember an old plea of yours that lawyers should be taught political economy. That was never so forcibly brought home to me as now. I send you a comment of mine on a letter of Wrenbury's which will explain the kind of problem we have.² The fight, I fear, will be very bitter, but if we lose the elementary right of combination will go; and we shall be back in the old bad days before the repeal of the Combination Acts. It's worth struggling against that.

Otherwise my main job has been writing a quarcentenary article on Machiavelli — an interesting job, though difficult because it is so hard to say anything new. But I hope I have brought out some points too rarely noticed, and, at least, I thoroughly enjoyed reading him. I expect

¹ On April 4 the government introduced its Trade Disputes and Trade Unions Bill. Its most significant objectives were to make a general strike illegal and to outlaw sympathetic strikes. After long and bitter debate the Bill, with some modifications, became law in late July. Laski wrote of the matter in "Mr. Baldwin attacks the Trade Unions," 51 *New Republic* 63 (June 8, 1927).

² The enclosure is missing. Lord Wrenbury's letter was in the *London Times*, April 18, 1927, p. 11.

with this letter you will receive my little book on *Communism*. You know with what affection it comes to you; and I have a belief that you will sympathise with its general tone. However, that you will tell me, I know, with the full frankness of friendship.

Of other things there is not much to record. Perhaps the most amusing arises from a visit of mine two years ago to S. Wales where, one evening, an old miner entertained me with tales of the mines sixty years ago. I said, in a moment of enthusiasm that these reminiscences would make a good book. Yesterday arrived a ms of 600 pages full of long disquisitions on his religious beliefs of which the sum seems to be that the outstanding thing in his life was when, in 1879, he read the sermons of Whitfield [*sic*] he realised that Calvinist Methodism is the only path to heaven. I have returned the script with as kind a letter as I can; and have written over my heart, "*Surtout point de l'enthousiasme.*" I had also a visit from a gentleman who amused me much. He was one of these crack-brained currency cranks who can solve all social questions by the multiplication of paper money. He wanted me to write a preface to a book he has written. I refused, on the ground that I knew nothing of finance. "You must learn" he said, and offered to give me free instruction in return for a preface. I had great difficulty in getting rid of him and he told me that, like all professors, I was harsh, unsympathetic and pontifical. I ask you frankly whether one can be a Christian, (or even a Judaeo-Christian) in a world so composed.

In the reading line nothing of supreme interest to tell. The most interesting thing was a brief and quite exquisite little biography of Wesley by Dean Hutton (Macmillan) which I think you would both like. It paints and explains; it is less than 200 pages; and it really tells you all you want to know. I have also had to read and review a vast work on the modern state by J. A. R. Marriott³ which seemed to me to say quite obvious things quite obviously at intolerable length, but which the "Tories" thought of indispensable value. I also bought and read in bed again William James's *Letters*. They are really entirely delightful, and his sly digs at Henry do my heart good — but, as you know, I am a heretic about the latter. In bed, too, I reread Acton on *The French Revolution* which is, I think, in its queer, allusive way, about the most profound thing there is on that portent. But there is still a great essay to be written on its political philosophy, as on its political precursors. Have you, by the way, ever read Lanfrey on the *Church and the Philosophers in the XVIIIth Century*? That is the way to deal with the black gentlemen. You assume that they are vicious. You insist that they cannot be sincere. And

³ Laski's review of Sir John Marriott's *The Mechanism of the Modern State* (1927) has not been located.

the result is the proof that they are blackguards. The only thing wanting in him — he writes with superb verve — is the inability to dip his pen in the blood of churchmen. I really enjoyed him; for a thoroughly angry anti-cleric is a heartening spectacle. Birrell, by the way, whom I met at tea told me a good story of Leslie Stephen. The latter called on Morley at his house in Surrey and they had a two hour jaw on literature. As Stephen took up his hat to go he said to J.M. "Oh! by the way, you know that the Germans have taken Sedan?" And Birrell added that this was the proof of Stephen's greatness — "he never magnified incidents into events."

I hear with joy that you and Brandeis have dissented in a labour case where emphasis was demanded.⁴ I await the decision with eagerness.

My love to you both.

Ever affectionately yours, H. J. L.

Washington, D. C., April 25, 1927

My dear Laski: It is ages since I have written — but I couldn't help it. I have been very busy and last week was rather under the weather with my insides. As probably I have told you I have had all forms of belly-ache known to the law except Asiatic *cholera*. So I have to mind my eye. However it is all quiet along the Potomac tonight (or more strictly, this morning).

Your Paris experiences are wonderfully interesting — what you say about the literary groups falls in with an impression I got from a book by a French interviewer in the time of Zola. The fierceness with which each crowd spoke as if divided by a gulf when to me they looked as like as Chinese — or had the same flavor throughout like herrings in a box. As to a renaissance I heard a similar prediction for this country the other day — that from the chaos of doubt and ruins of the old times would arise a generation of philosophers and poets. I am not quite sure — I think it was from Wallas. Wallas has come here two or three times and I infer rather liked it as he said that he should telephone on his return in May. He now has gone to lecture elsewhere. My secretary thinks that he doesn't lecture as well as he talks. I of course have had no chance to hear him *ex cathedra* — his talk is very agreeable. I have done nothing but law — my opinion for this morning is held up by McReynolds for a dissent. That which was given to me Saturday evening and was written yesterday concerned the constitutionality of an act for sterilizing feeble-minded people,

⁴ *Bedford Cut Stone Company v. Journeymen Stone Cutters' Association*, 274 U.S. 37, 56 (April 11, 1927). Brandeis, J., with Holmes concurring, dissented from the majority decision that under the Sherman act a strike against nonunion materials was unlawful.

with due precaution — as to which my lad tells me the religious are astir. I have just sent what I think to the printer.¹

The Chief has given me a pretty interesting lot of cases this term — and I have enjoyed writing them. I am always afraid that he is considering my age &c. and giving me easy ones — but Brandeis seems to think not. Frankfurter's book on Sacco and Vanzetti and the case itself has kicked up a commotion and Brandeis says that Beacon Street is divided. Bishop Lawrence² and others of the elect, like Charley Curtis (jr.) taking the side of the accused — *per contra* Bob Grant (ex probate judge and author)³ called yesterday and gave me a moderate statement tending rather the other way. The wife appears and summons me to Court. Therefore a premature *adieu*.
Affectionately yours, O. W. Holmes

Washington, D. C., April 29, 1927

My dear Laski: You have written delightfully interesting letters to which you have received inadequate replies as I have fewer things to tell and, as I wrote a day or two ago, have been driven hard and for a few days rather below par. I am all right now, but fate is plucking the leaves from the old tree rather fast. The day before yesterday came a telegram from Mrs. Beveridge telling of her husband's death that morning. And yesterday a letter giving me my first news of the death of Lady Castletown one of my oldest and most intimate friends.¹ Beveridge was a surprise although some years ago I got the idea from his doctor that he was running the machine too hard. I shall miss him until I am missed. Lady Castletown had had a stroke coming on top of other trouble so that her death seemed probably a release, but it makes a great gap in my horizon. It is a great fortune for me to have the friendship of some of you younger men. Tom Barbour turned up also two days ago far from well but he went on to Philadelphia yesterday and I hope will have no serious trouble. Apart from events all my ideas are in the law. I have had some rather interesting cases — the present one, as I believe I mentioned, on the Constitutionality of a Virginia act for the sterilizing of imbeciles, which I believe is a burning theme. In most cases the difficulty is rather with the writing than

¹ *Buck v. Bell*, 274 U.S. 200 (May 2, 1927). Holmes, for a majority, sustained the constitutionality of Virginia's sterilization statute. Butler, J., dissented without opinion.

² *Supra*, p. 109.

³ Robert Grant (1852–1940) was later named to the commission appointed by Governor Fuller to consider the application for the commutation of the sentence on Sacco and Vanzetti. The commission recommended execution of the sentence.

¹ *Supra*, p. 782.

with the thinking. To put the case well and from time to time to hint at a vista is the job. I am amused (between ourselves) at some of the rhetorical changes suggested, when I purposely used short and rather brutal words for an antithesis, polysyllables that made them mad. I am pretty accommodating in cutting out even thought that I think important, but a man must be allowed his own style. At times I have gone too far in yielding my own views as to the reason for the decision. Years ago to finish a case that had been dawdled with for many months I struck out my reasons and put in what I thought at least inadequate and appear in the books as sanctioning what makes me blush.² This time, though I had said, Never again, I did the same thing in a milder form, and now as then have to accept criticism that I think pretty well justified. However, sooner or later one gets a chance to say what one thinks. I believe today is our last day of argument except one case on Monday. And the so-often-expected and near-coming leisure seems to be near at hand. Apart from the light stuff that I hear in the late evening I have read nothing, except at odd minutes to reread Murray's *History of Political Science*, which I believe you put me on to — a good book very ill written. I think I shall do some other rereadings when I get the chance. Fred Pollock's *Spinoza* for one and possibly a little of the old man himself. He comes nearer to me than most of the old. I am much pleased with your poet. The English are more ingenuous and innocent than we, even if capable of deeper abysses. And the particular swagger of poets as admitted to deeper intimacy with the cosmos than the rest used to aggravate and now amuses me. I gather that your lad was quite young. Probably he will get a jolt someday that may open his eyes. I should think you would be curious to look up his product.

How solemnly men have taken themselves. Theology has helped it. If there is to be the revival that you for France and Wallas for America predict, I hope that a corner-stone will be that speculatively man is interesting only as part of the cosmos, and that he cannot assume that he is specially needed as its confidential friend. The time for departure to Court has come and I must say *adieu pro tem*.

Affectionately yours, O. W. Holmes

Devon Lodge, 7.V.27

My dear Justice: Two most welcome letters from you. They remind me to adjure your abdominal organs to behave themselves. I write with the bitterness of one who has been for two days in a diarrhagic coma, the more intensely felt because each spasm has been disturbed by the telephone.

² *Supra*, p. 901.

But much of my pain disappeared on reading Felix's reply to that incredible Wigmore.¹ Nothing is more delightful than a really great surgical job. Certainly if I were Wigmore I would turn my attention to lesser artists in dissection.

Life here is rapid because of this Trade Union Bill. I send you a letter of mine with which, I think, you will agree; and if it is not a bother, I would like you to hand it on to Brandeis. The problems are less interesting than settling whether a feeble-minded Virginian is to remain virgin, but, as Carlyle said, they make "bonny fechtin'."

The most pleasant thing since I wrote last was a dinner with Sankey, J. to meet three of his colleagues. One, Mackinnon, J.² a new man, I found delightful for he was a real shark on Jane Austen, Dr. Johnson, and Pepys, and made me feel a worm for my ignorance. Another was, I gather, a great swell in commercial cases; but he seemed most interested in incomes at the Bar, wherefore I led him up the garden gracefully. He said that J. Simon was making sixty thousand a year, so I invented a quite imaginary Bonville-Smith (don't you think Bonville a neat touch) who now makes £100,000 and never appears in Court. The others nodded solemnly and the poor judge was quite persuaded by the third glass of port that he knew of him vaguely, but had no idea he did so well. A killing little K.C. was there whose only passion in life was Waterford glass. He had been to America twice to see two pieces and had no notion that America had anything of interest except these. We talked of cathedrals and mentioned Salisbury. He pointed out that near the Cathedral was an antique shop where he got a goblet c. 1776 for eight pounds. Had he been to the Cathedral? No; he had not realised it was open on week-days. I add an attractive dinner I gave at the School to introduce Churchill to some of my younger colleagues. He was like a great actor playing a part. He did it supremely well, and, I think, enchanted them. But he left me convinced that a political career is ruinous to one's simplicity. He searched always to end a sentence with a climax. He looked for antitheses like a monkey looking for fleas. At one time he was so asseverative about loyalty to the state that I was tempted and asked him to define what he meant by the state. I then fully understood why a wise minister rarely answers supplementary questions in the House of Commons. But he is a good fellow, incurably romantic and an arresting mind. His tendency to

¹ The exchange of letters between Felix Frankfurter and Dean Wigmore appeared in the Boston *Evening Transcript* from April 21 to May 11. Wigmore's letters were infected by the petulance of a panicky patriot. See Joughin and Morgan, *The Legacy of Sacco and Vanzetti* (1948) 260-262.

² Sir Frank Douglas MacKinnon (1871-1946), Judge of the King's Bench Division, 1924-1937; Lord Justice of Appeal, 1937-1946; author of *On Circuit* (1940).

classify into black and white arises, I suppose from his profession. All statesmen are theologians who have not taken holy orders.

Wallas writes me with enchantment of his visits to you. I gather he has been Brahminising at Boston and seeing Felix. I wish you had met his wife who is adorable, with a touch of malice that does one's heart good. Have you seen Redlich at all? You do not mention him; but I imagine you must and have felt, as I, that few minds are richer or more stimulating. I did not know your friend Lady C. But I must not forget to tell you that the other day at Haldane's — Mrs. Holmes, please, must hear this, — Lady Oxford was talking of eyes and said that in the '90's, you had a provocative gleam that might easily have tempted her had occasion offered; and old Lady Horner was emphatic in the same direction. I must say that these English friends of years ago have you most vividly in memory.

Your word of Beveridge's death was the first note of it I had seen and I was deeply shocked. I thought him not more than fifty-five; and I liked him greatly. He was more expansive than I can always grasp, but his affection was sincere and his devotion to his job unmistakable. Could your secretary put his wife's address on a card for me? I would like to send her a note of sympathy.

In the way of reading, I have little of significance to tell. I have been mostly on Rousseau and the hard grind of a big case before the Industrial Court where we may make the Government miserable by saying that certain classes have been done out of a million. But in books I await in trembling excitement for the result of a telegram to Holland. If it comes off, I get the book I have searched for since 1912. But I got the catalogue at one remove; the book is cheap; the bookseller does not know me; the book is searched for; I hardly dare to hope. Yet when I tell myself that even if I miss it, the world will still go on, I have a sense that it may be less bright than before. To be a book-collector is bad for the heart. But what does the heart matter compared to being a collector?

My love to you both. Get that stomach better, please. Sterilise *all* the unfit, among whom I include *all* fundamentalists.

Ever affectionately yours, H. J. L.

Washington, D. C., May 12, 1927

My dear Laski: Bad days these for writing or reading (anything but cases and *certioraris*) and I can't send more than a bulletin. When I thought my work was done new stuff came pouring in and there has been no rest. Your book on *Communism* came shortly after your letter — and in crevices of time I have read half of it. It seems to me, if I may

say so, that your writing has improved again and I find it deeply interesting, interesting not only in itself but in suggesting the rationale of the differences between us. The deepest no doubt turn on what we like, as to which argument is useless — but there are also differences in theory. I have no respect for the passion for equality, which seems to me merely idealizing envy — I don't disparage envy but I don't accept it as legitimately my master. If I am to consider contributions they vary infinitely — all that any man contributes is giving a direction to force. The architect does it on a larger scale than the bricklayer who only sees that a brick is laid level. I know no *a priori* reason why he should not have a greater reward. Kant did it on a larger scale than the architect. But you know my views on that. I think the robbery of labor by capital is a humbug. The real competitors are different kinds of labor. The capitalist by his power may turn a part into directions that you deem undesirable — but if he does he does it because he thinks a body of consumers will want the product and he is the best prophet we can get. Some kind of despotism is at the bottom of the seeking for change. I don't care to boss my neighbors and to require them to want something different from what they do — even when, as frequently, I think their wishes more or less suicidal. It is not really theory but a prophecy that the crowd having got the power will use it to smash this or that that lays the foundation for much of the fundamentally innovating talk. I think it playing with fire and if I were not reduced to a nearly exhausted spectator, should say I will take what precautions I can and abide the result — reminding you that it may be you as well as it may be I that is hurt. I should rejoice if as you say you had written over your heart "*Surtout point de l'enthousiasme.*" I am amused by your currency man — I don't know but they are the hatter-est kind of social tinkers. I wrote and delivered a decision upholding the constitutionality of a state law for sterilizing imbeciles the other day — and felt that I was getting near to the first principle of real reform. I say merely getting near. I don't mean that the surgeon's knife is the ultimate symbol. Your description of Lanfrey on the Churchmen has its parallels in every cult. The abolitionists as I remember used to say that their antagonists must be either knaves or fools. I am glad I encountered that sort of thing early as it taught me a lesson.

Well, dear boy, I wish I could go on but opinions and *certioraris* are waiting to be attended to and this must let me out. My homage to the missus.

Affly yours, O. W. H.

Washington, D. C., May 20, 1927

My dear Laski: (1) Before anything else let me give you the requested address of Mrs. Albert J. Beveridge — viz. #4164 Washington Boule-

vard, Indianapolis, Indiana, or at least that was it a few days ago. I suppose from the papers that before long she will go to Beverly Farms — Massachusetts.

(2) Insides all right. I hope yours are! . . .

I have had no leisure till the last two days when I have had pleasant drives and read Lawrence's book — *Revolt in the Desert*. I asked Wallas who has just been here at luncheon what the inducement was. He spoke of it as a contribution to the war — which of course — would make it perfectly intelligible — but I got the impression of a previously existing hobby. Probably I was wrong. I haven't quite finished your book. You state the pros and cons fairly — but with an implied sympathy for beliefs that I believe to be noxious humbugs — that grieves me. I feel as if the *idem sentire de republica* tended to become less keen between us. Either I am wrong or your present associations and reflections are leading you a little further in a direction away from our common ground. Wallas is a very pleasant fellow. I do not feel as if increased familiarity meant increased intimacy — but he is cultivated and says a thousand agreeable and more or less suggestive things. What an advantage all Europeans have in learning so much of our historic environment through their eyes — not to speak of object lessons in art &c. Of course faculty is more important than education but certainly we are heavily handicapped. The melancholy of the languid spring and of having finished work for the moment is upon me. Luckily I no longer think such things important — as I don't think man so, except from his own point of view or as part of this universe. If the prophecy that Graham Wallas was mentioning of the return of the ice cap in 1700 years may be accepted, perhaps it would cool our enthusiasms.

The afternoon grist of duties comes in and I must turn aside to opinions and letters to be answered. Then I will sleep and cheer up.

Affly yours, O. W. H.

Devon Lodge, 21.V.27

My dear Justice: Your letter was indeed a delight; and though I should, I think, deny almost the whole of your economic diagnosis as born of a philosophy contradicted by the whole trend of modern fact and analysis, I enjoyed every word of it. I add that it is at bottom the economics of the soldier who accepts a rough equation between isness and oughtness. I see no validity in such a creed except upon principles I would deny at the stake.

Life has been a little overwhelming this past fortnight. I have sat on a big civil service case in the Industrial Court which has so far occupied three days. I have been chairman of a Conciliation Court in the

Co-operative Industry where, the case being left to me as independent arbitrator, I had the satisfaction of establishing the six-day instead of the seven-day week for milkmen — an obviously desirable change; and I have been acting as legal adviser to the trade unions on the present Trade Disputes Bill with the advantage of reciting judicial opinions to them and their opponents on the unwisdom of words like “intimidation” and “coercing the community” drawn from your old Massachusetts opinions. Also I had one great adventure with Frida which, psychologically, was most interesting. We motored to Cambridge for the day and, on the way back, skidded on a slippery road. The steering-gear went wrong and for one minute we found ourselves headed straight for a stone wall at the bottom of a ditch. It was certain death and in that one minute I found that I certainly thought of these things: (I) Was there any danger of Diana receiving a religious education from her grandparents? (II) If Frida survived me, would I leave enough to make her comfortable? (III) Who would succeed me in the university? (IV) What a pity I had not finished my book on French political ideas? (V) Would people remember to let Felix know what had happened? (VI) What a curious contrast between an hour ago in Cambridge and this moment. But just as everything seemed ended the car turned slightly and grazed the wall on its side instead of the front with the result that beyond a slight shock we were absolutely untouched and after changing a buckled wheel able to proceed home safely. It was intensely interesting even if uncomfortable; and I was struck by the rapidity with which the mind went on working, as also by the continuity of its operation. So far as I know consciously neither of us had any sense of fear; it was rather a sense of fate. The thing was there and one simply awaited the result like the fifth act in a drama.

We saw Chafee in Cambridge and hope to have him here next week. I had a good gossip with him about the Law School and found to my interest that he shares my doubts of Pound and the illusion of bigness. I also had tea with Lowes Dickinson and heard much of the problem of the unmarried don after he had passed the meridian — an interesting issue. Dickinson was very definite that the semi-monasticism of the older universities is a mistake. It may, he thinks, suit the great man with a 40-year *magnum opus* to finish. But the average don is then conscious of powers that begin to sag a little, of new generations pressing on behind, of lonely evenings and lonelier vacations; above all, he said, of the inertness of an institutional routine instead of the freshness of a home.

One or two things I have read I must mention to you. A remarkable American book, which I beg you to take at all costs to Beverly Farms — *Main Currents in American Thought* by V. L. Parrington, 2 volumes (Harcourt) which is, I think, pretty nearly a masterpiece. It is learned, well-written, and most stimulating; and it makes America part of the world

instead of an independent hemisphere. Do please read it and let me have your views. Second a Russian novel by one Vieressiev called *Deadlock* which is quite remarkable. It is a study of a tiny town in the Caucasus during the Revolution which is taken one day by the Reds and retaken the next by the Whites; and it studies the effect of change in the villagers and others. I found it extraordinarily illuminating. It bears the obvious marks of truth. It is well-translated and gives one a glimpse of an experience we ought to know and are never likely to see at first-hand. I read, too, the much-vaunted *Napoleon* by Emile Ludwig. It is something of a *tour de force* and powerfully written. But I found myself wondering where Napoleon ended and Ludwig began; and the style in places was nothing so much as Mr. Alfred Jingle turned historian. Much more arresting was Ducros's *Rousseau* which comes as near I think to solving that enigma as we are likely to get; and it has a chapter on Rousseau and religion which is quite masterly. Also I should note a pleasant life of Burke by one Bertram Newman, which tells the story pleasantly and straight-forwardly and has an interesting sketch of political life in 18th century England. It has no *aperçu* of its own but it is a good bed book in its way.

My love to you both. You must be pining for Beverly Farms.

Ever yours affectionately, H. J. L.

Postscript, Washington, D. C., May 21, 1927

My dear Laski: Another day has come — I have finished your book and I don't feel quite so seedy as I did yesterday — wherefore this p.s. Of course I appreciate what you and Keynes say, that the Russian Communism is a religion and therefore cannot be expected to be just. But I don't see why sympathetic understanding should be confined to one side. Capitalism may not be a religion but it commands a fighting belief on its side and I don't at all agree to describing its tyrannies with resentment, as coming from bad men when you gloss those on the other side. I think that most of the so-called tyrannies of capital express the economic necessities created by the pressure of population — a pressure for which capitalism is not responsible and for which communism has offered no remedy. If I praised or blamed (which I don't) either one, I should blame the communists as consciously and voluntarily contemplating their despotism whereas on the other side it is largely unconscious and the automatic result of the situation. I may add that class for class I think the one that communism would abolish is more valuable — contributes more, a great deal more, than those whom Communism exalts. For as I said the other day, the only contribution that any man makes that can't be got more cheaply from the water and the sky is ideas — the immediate or remote

direction of energy which man does not produce, whether it comes from his muscles or a machine. Ideas come from the despised *bourgeoisie* not from labor. With which I shut up and go for a capitalistic drive from which I hope some little joy.

We look at our fellow men with sympathy but nature looks at them as she looks at flies — and some of her dealings are hard but should not be attributed to those who from the accident of position happen to be her instruments.

Affectionately yours, O. W. Holmes

Devon Lodge, 29.V.27

My dear Justice: Your letter was a delight indeed. And even though I see a real disparity between us on intellectual problems, I can't say I greatly mind. For your scepticism drives me back each time on first principle which is an admirable thing for me. A good deal of our difference is, I think, due to our different civilisations. You are living amid a system where the classic principles of capitalism still work successfully, I amid one where the growing inadequacy of that machine is most obvious. In the result you, broadly, are satisfied, I, broadly, dissatisfied with the classic economics. You see a general adequacy which makes you believe in economic liberty; I see a general inadequacy which makes me believe in economic equality. We are looking at different materials and drawing, naturally, different results from their contemplation. I add that I think you have not taken account of an immense new body of experience in economic matters, and that you do not allow enough for necessary modification of economic principle as it meets that new experience. Also, I think, you are over-occupied with pure theory and make quite insufficient allowance for a friction which makes pure theory relatively negligible in its operative influence. However, one day I shall set this all down at length in a short book and then, I hope, I shall drive *you* to revise *your* first principles. And I add (not without malicious joy) a reminder of your young friend's warning about building philosophies on fears rather than hopes.¹

I have been fearfully busy this last week. A big case in the Industrial Court took two days from me; I had to lunch with MacDonald and talk to him about our Trade Union Bill and we had a dinner for Chafee of the Law School to meet some judges and politicians. Add to this a report I have been asked to do for the Inter-Parliamentary Union² and you will guess that I have not slumbered. But there have been joys on the side. Felix's second dose to Wigmore gave me pleasure. I cannot make out

¹ *Supra*, p. 9.

² "The Present Evolution of the Parliamentary System," *Inter-Parliamentary Bulletin for 1927* (n.d.), 81.

what has happened to the latter, for he is not usually so ignorant or so absurd. And a letter from a madman in a workhouse who wrote to me that having just read my *Communism* he thought he ought to inform me that he was an illegitimate brother of Karl Marx was not without its pungency. I was afraid he might come to see me, but, so far, Providence has been kind. Also I had a delightful lunch with Sankey, J. who told me a good story of ——— who has wangled himself — on what grounds I do not know — into being called a K.C. wherefore in the Temple, on account of his inability to get a brief, he is known as the “artificial silk.” Sankey also told me that on a recent Assize he and his colleague dined with a *nouveau riche* who had gold plate on the table. The judges carefully refrained from comment and the host’s face grew longer and longer. At last, when the ladies had left, the poor man could stand it no longer and burst out, “I suppose it would need diamonds before you gentlemen would lower yourselves to make a kind remark.”

In the way of reading not much of special excitement. Best of all, Ducros’s *Rousseau* which is at once the most sensible and learned discussion I know and a well-told tale. And he interested me in that he was the first person I have read on R. who makes out an intelligible case for Thérèse Levasseur. Also he summarised admirably the whole issue between R. and Voltaire where, I think, most people go wrong. I don’t really think it is possible to doubt that Voltaire’s *Sentiments d’un citoyen* did provoke Rousseau’s insanity, and, also, the writing of the *Confessions*. If it is available I think Ducros would give you pleasure down at Beverly. I have been reading *pari passu* with this the lesser known things of Rousseau such as the *Letter to Beaumont* and the *Reveries*. The first is surely controversy at its highest level and makes you feel the genius of Rousseau as nothing else I know; the second, emotionally, overwhelmed me and was especially fascinating because of the resemblance of its essence to Wordsworth. I wish I had an extra life, or a year’s leave, to write a book about Rousseau; there is so much that could be usefully said that is nowhere in the literature. Especially I should like to show the relation of his philosophy to that of Burke and how the two men converged to form one stream of influence in the 19th century.

My bookhunting, I regret to say, has been a series of gloomy tragedies. I missed the book from Holland by a day. I missed a Bentham on which I bid at auction by five shillings through trusting a bookseller (who bought it for himself) instead of bidding in person. I missed, also, a very cheap set of the *English Reports* (70 pounds) at a country sale where I could not go. The only relief is the prospect of our summer holiday in the Savoy Alps which means that I can get to Geneva, Berne and Lausanne which always yield fruit unobtainable elsewhere. On the whole, the English shops yield but little nowadays and they have become (thanks

to Americans and Japanese) very expensive. But I still hunt cheerfully and the actual joy of the chase is certainly as keen as ever I have known it.

I am sending you separately a little French book on beggars which may amuse you. I don't know if you have ever looked at the contemporary Tudor literature on the topic, e.g. Awdelay's *Confraternitie of Vagabonds*, or if you know the delightful book of Aydelote's *Elizabethan Rogues and Vagabonds*. If not, the temptation of the title ought to be strong, and it is every whit as good as the title. And I do beg of you to read at all costs and come what may Helen Waddell's *The Wandering Scholars* which is the most wholly delightful, and original book on the middle ages published in the last generation. If you will but get it and begin you will arise and call me thrice blessed for having been its sponsor. And do not forget Parrington's *Main Currents of American Thought* of which I spoke last week. That is really arresting and instructive.

My love warmly to you both. Heretic though I am I find that my eyes look still to 1720 as the centre of my Transatlantic affections.

Ever devotedly yours, H. J. L.

Washington, D. C., June 1, 1927

My dear Laski: Your letter is the last or last but one that will find me here if all goes as we expect. Boston 8th, Beverly Farms the Saturday or Monday following. Of course the first thing is your escape and your reflections in the moment of imminent death. They do not surprise me as I have had several experiences of that sort, and always have found that when you are in the trap it seems perfectly natural and you think on that footing. But it changes in a flash if you see a chance to get out. You put well a philosophic rather than economic difference between us. I do accept "a rough equation between isness and oughtness," or rather I don't know anything about oughtness except Cromwell's — a few poor gentlemen have put their lives upon it. You respect the rights of man — I don't, except those things a given crowd will fight for — which vary from religion to the price of a glass of beer. I also would fight for some things — but instead of saying that they ought to be I merely say they are part of the kind of a world that I like — or should like. You put your ideals or prophecies with the slight superior smile of the man who is sure that he has the future — (I have seen it before in the past from the abolitionists to Christian Science) and it may be so. I can only say that the reasoning seems to me inadequate and if it comes to force I should put my [illegible] on the other side.

I am glad at what you say about Pound and his illusion of bigness. I never have contributed until a few days ago, when my secretary said they

have got Pound's money but really need some to pay professors and do some building, whereat I sent \$100 — and some doubts whether I was right — especially at this moment. I understand that owing to the hold-up just before Congress adjourned and the failure to pass necessary bills our salary will not be paid this month or next — so that I am calculating a little closely so as not to have to borrow. I presume it will all come in later with a rush, but the interruption is unpleasant.¹

June 2. A new and pleasant day has come. My work is done and I am divided between the business of packing one small trunk to be sent to Beverly Farms and presently going out in a motor with my wife. When in doubt let pleasure prevail over duty. One of the ways in which I avail myself of my limited plutocratic advantages is to send my trunk by express rather than have the bother of taking it with me and sending it on from Boston. Yet I have scruples. I wouldn't, I think, smoke dollar cigars. To be sure I am content with 12 cent ones, but I think I wouldn't even if I wanted them, on the ground that I ought not to avail myself of my power to levy that tax on the total stream of products. You see we of the exterminand class have some conscience. I have had my drive and luncheon at Rauscher's — as our women have left. Do you know how beautiful the Potomac is? We often drive up to the Chain Bridge — some miles up — cross and come down on the other side or return on our steps. I wish I could go on to Ball's Bluff where over 65 years ago I climbed those banks — but I doubt if I ever shall. 25 years of wishing have gone by — and it does not grow easier except in the roads and means of travel. In a few minutes when the victuals have settled I will turn to my modest packing.

I have made a note of your Parrington Book on *American Thought* for Beverly Farms. Also Morley's *Diderot*. So I shall have something to read at once beside my own volume of opinions which it is a first task to page and index. I am pleased with this year. Apropos of your talk with Dickinson about the dons, I think Leslie Stephen used to speak of those who lived on the reputation of a book that they were going to write.

Well — fire away my lad — I wish that we didn't diverge as much as we seem to — but I am afraid that I am no less convinced than you. Everyone thinks that he can account for the opposite convictions of his neighbor.

Affectionately yours, O. W. Holmes

Beverly Farms, June 14, 1927

My dear Laski: This paper marks the arrival at Beverly Farms and the receipt of a letter from you, which leads me to say a word more about our differences. I don't profess to know anything practically — theory is

¹In March a Senate filibuster had prevented the adoption of the Urgent Deficiencies Bill.

all that I can bring even to the law. But theory sometimes leads one to keep in mind fundamental facts that one more versed in detail may forget. You speak of an immense new body of experiences — Hum — have you had it? The modern books that I have read have seemed to me drool on their theoretic side. But if you should say that you are dealing empirically with an empirical case — I should listen respectfully. For I perfectly admit that if you have the power on your side and find that present arrangements cause you a discomfort that you can shift to somebody else, you probably will do so — and I should bow to the way of the world. I thought, however, that you also were theorizing — and stating or intimating things that you deemed ultimately desirable — and evidently what you desire and what I desire are appreciably different. So we will put up hedges to keep the unpleasing out of sight. When you write your book that you think can upset my theories I will read it — if I still am going — but you seem to be a trifle cock-sure.

I wish I had had your book-talk before I left Washington as I have a good book of which I forget the name, author and almost the theme, which deals with the rogues in literature. I'm afraid I shall not receive your little French book until I get back — as only letters are forwarded. I make a note of Helen Waddell *The Wandering Scholars* and will try for it. I couldn't set eyes on Parrington while in Boston — it had been taken out from the Athenaeum. The Corner Book Store didn't have it and I didn't want to order it without inspection. I may try again later — but I want to begin and for a few days have no *pièce de résistance*. I brought down a little book, Pourtalès's *La vie de Franz Liszt* — which I haven't finished. The portrait of him as a young man is loathly — and I bet he didn't smell good — but Liszt and Wagner are noble and impressive. They care more for art than for themselves. Perhaps that is true of all who work with an ideal, and no doubt those gents are a little theatrical. I will wait until I finish the book to see what I think of the subject. I get the impression that the ladies who tumbled to him were facile, as were those of Casanova, given certain preliminaries — in his case music and fame. But I should judge that he did his anti-Malthusian damndest — which reminds me Fred Pollock speaks of Saint Jane (Austen). I shall speak of Saint Malthus.

Affectionately yours, O. W. H.

Devon Lodge, 5.VI.27

My dear Justice: Since I wrote last, I have had a stroke of ill luck; for I had a bad dose of influenza — whence, I do not know — with the result that the last week has passed mournfully in bed. However, I am up and about again; and at least I have had a good dose of books in bed.

Of them the most interesting has been Gibbon whom I took in at the rate of a volume a day in Bury's edition. The effect is really overwhelming. He has a poise, a sureness of foot, and a rationality which make you forgive him everything. And the sweep of the thing is beyond words. I was very moved by Bury's notes; for he makes it clear that, the Eastern Empire apart, it is detail rather than principle that modern criticism corrects; and that, after 150 years, is a thing that cannot be said of any other eighteenth century work. Then I read a charming thing on Mabillon and the Benedictines by de Broglie — an exquisite picture of an exquisite cenacle of scholarship. The controversy between Mabillon and Rancé is most attractively done.¹ Probably, like so much French work, the outlines are too lucid; but it is a book one can read comfortably with the sense that a number of instincts are simultaneously satisfied. I read also Emerson's essays in the Morley selection — I must add with greater pleasure by far than I expected. There is really poetry in him, and amid much sententiousness a good deal finely observed and even more finely said; and the famous bit at Harvard showed that he was not merely clerical in temper. Also a fascinating book on Robespierre — a defence of him — by Albert Mathiez who is now, after Aulard, the most learned man on the Revolution. I can't say I find the defence convincing; but I think Mathiez explains his man better than others. For after all if R. had been only what Morley makes him out to be he could never have beaten Danton.

I have been amusing myself, too, by reading a good deal of old Hobbes, with what pleasure you can imagine. One thing struck me most forcibly and that is that in explaining him nothing has been made in the books of the really obvious fact that his view of human nature is simply Calvinism set down in naturalistic instead of supernatural terms; and that anyone who reads the old Arminian controversy will perceive without much difficulty where he got his notions from — especially as we know how interested in it he was. And that leads me to the further reflection that not a little of the explanation of the Calvinist view is that it provided a basis for controlling human nature in that period when the exuberance of the Renaissance and the "follow your impulse" theories of Luther had released it from bondage and tended, accordingly, to make it a dangerous thing from the standpoint of government. Also I add the reflection that too much is made of the singularity of Hobbes's view. In the secular field abroad he is very akin in substance to La Rochefoucauld (whom he prob-

¹ Jean Mabillon (1632-1707), Benedictine scholar, challenged by Le Bouthillier de Rancé (1626-1700), the abbot of La Trappe, to defend the studies in which Maurists were engaged, published his *Traité des études monastiques* (1691) and *Réflexions sur la réponse de M. L'abbé de la Trappe* (1691-92).

ably knew) and the Jansenists, whose works he had probably read. In fact I should like to see an essay on Hobbes's contemporaries pointing out how greatly he reflects a very general environment and transcends it only in his ability to get rid of a good deal of theological rubbish.

You can imagine that I was delighted to see that the Governor of Massachusetts had appointed a commission to enquire into the Sacco-Vanzetti case — Lowell, I imagine, would be fair; and I think you have some confidence in Judge Grant though I remember that at the time of the Harvard inquisition into me he tended to look upon radicals as noxious insects. The other man I do not know even by name.² But a reading of Felix's book ought to lead them to the salient points and result in a full pardon. It would be terrible to have an unsatisfactory ending with the Mooney case so recently before the attention of Europe.

I have been able to buy one or two pleasant things from catalogues. The nicest is a fine eighteenth century Locke in 4 vast quartos and bound by Roger Payne.³ It looks most ample and the correspondence is singularly attractive on a big page with margins wide enough for annotation. Then I got, too, a 3 volume collection of the Remonstrances of the Parliament of Paris in the 18th Century which is extraordinarily revealing. For it shows conclusively how absolutely abhorrent to them was the Encyclopedist Movement. In their way these lawyers were as prejudiced, as narrow, and as ignorant as the priests. Their hostility to reform makes one wonder not why the Revolution came but however it came to be postponed for so long.

We have just arranged our summer holiday. We propose to go to Argentière, a tiny place at the foot of Mont Blanc and half an hour from Chamonix. Sankey, J., who knows it, is lyrical about it, and it appears from photographs to have scenery beyond words. Do you know the French Alps at all? I like the idea of the place as it is only 2 hours from Geneva and I can go and pillage what are, from my standpoint, the three best bookshops in Europe, which I have been aching to see again since I was there last year. There is one place especially where one can spend the day going through 17 and 18th century political philosophy in perfect comfort and one's finds are limited only by one's pocket. And it is near Grenoble where there is a shop I have never seen. This to me is a lyric and I assume that the prospect even at 3500 miles makes your heart *quâ* hunter beat a shade faster.

My love to you both.

Ever affectionately yours, H. J. L.

*Samuel W. Stratton (1861–1931), physicist and President of the Massachusetts Institute of Technology, was the third member of the Advisory Commission which Alvan T. Fuller (1878–) had appointed on June 1.

³Roger Payne (1739–1797), London's eccentric bookbinder whose work was notable for the originality of its design.

Devon Lodge, 19.VI.26 [sic]

My dear Justice: I think I envy you a little the peace and quiet of Beverly Farms. Since I wrote last life has been a heavy round of necessary jobs unavoidably to be done. First the wearisome business of correcting examination papers. Then three hard days at the Industrial Court on an extraordinarily complicated case where neither counsel nor witnesses were very helpful. Then a couple of outside lectures long promised. Finally a report for the Inter-Parliamentary Union on the prospects of Parliamentary Government.¹ But there have been compensations. First a splendid talk with Redlich who came here to dinner. It rejoiced my heart to hear of his enthusiasm for Felix; and hardly less to know that he thought (as I think) that McIlwain is the best man in the college. He takes very much our view of Pound, and (*entre nous*) was not very impressed by the new plans for the Law School.² Redlich is a brilliant fellow — I do not know five people who talk better than he does — and he made me feel in the case of my half-dozen ultimate friends in America that my heart has not misled my intellect. How could one help liking a fellow like that. Then Gooch turned up and gave me an account of his American Odyssey. It was interesting that Harvard to him meant Felix, Haskins, McIlwain. Pound he thought learned, but felt that he let the scaffolding obscure the building; and intellectually he thought Morris Cohen the ablest academic mind (including Whitehead) he encountered. So all my swans really are swans and I throw my hat up to heaven!

Of reading a little. Beard's two vast volumes for the business of a review.³ I thought them interesting because they arranged reams of fact that I had not had arranged before in my mind; but I had the impression of disappointment one might have in visiting a place and finding that the photographs had told one all one wanted to know. On the other hand T. R. Glover *Democracy in the Ancient World* I do warmly recommend. It is a fascinating and beautifully written pendant to Zimmern's book written by a real scholar who is yet no pedant. If that comes your way, please do not let it pass by. I read, also with great pleasure, the two volumes of Michelet on Louis XIV⁴ which are like Carlyle at his best — not over-zealous for accuracy, a passionate partisan, but emphatically a man who knows how to get hold of a period and explain what it is about. And finally with sheer delight though with grave doubt as to whether it

¹ See, *supra*, p. 946.

² The reference is probably to a new program of graduate research which was to be facilitated by the expansion of the school's buildings.

³ Laski reviewed Charles and Mary Beard's *The Rise of American Civilization* (2 vols., 1927) in 41 *Nation and Athenaeum* 584 (July 30, 1927).

⁴ Volumes XIII and XIV of Jules Michelet's *Histoire de France* (17 vols., 1852–67) are concerned with the reign of Louis XIV.

is true, Miss Harrison's *Themis* which gives you the excitement of going over a mountain on a Ford; you don't know what is going to happen to you next, but the view is superb while it lasts.

I was amused to hear that Congress has defaulted over the judicial salaries.⁵ What exactly is the technical position? In view of the guarantee that judicial salaries shall not be reduced in the holder's life I don't understand why there isn't the analogy to our Consolidated Fund which would make them run on, whatever happened to the more questionable problems of expenditure. But it must be extraordinarily inconvenient if Congress often has fits of the kind! I remember well when I was at McGill University with a salary (God save the mark!) of fifteen hundred dollars that the last week of each month was a nightmare through the fear that some extra expenditure we had not allowed for might turn up. One awful month Frida was ill and we had the choice between paying the doctor's bill and the rent. Luckily I remembered that I had in London an etching of Seymour Haden's and we sent home a night letter ordering it to be sold and the proceeds telegraphed to us. We just scraped through, but I decided then that debts are the child of the devil and, apart from one book account, I have always paid cash on the excellent principles laid down by our friend Micawber. That reminds me, by the way, that there is an admirable piece at one of the theatres here called *When Crummles Played*. They have dug up a play of his period and put it on as he might have done it with his company — beginning with a prologue in which Mrs. Crummles recites "The Blooddrinker's Burial." It is really gorgeous and one gets the real flavour of *Nicholas Nickleby* from a quite new angle.

Our love to you both. Give my greetings to Rockport.

Ever affectionately yours, H. J. L.

Beverly Farms, June 16, 1927

My dear Laski: The little French book was sent on and I have just opened it and read your letter. Both delight me. I do envy your book hunting — and I sympathize with what you say of Gibbon although he told me nothing that I wanted to know. I was equally impressed with his greatness and with the changes in the emphasis of our interests. On themes of perennial interest — the Roman Law — and Christianity — I should think from what I remember that he was behind the times, now. I have finished the little book on Liszt. You would read it in 2 hours. He was great in his treatment of Wagner, and women seem to have offered themselves to him up to the end. The writer treats him as a great originator in music. Of that I know not — but I do not believe that music is the highest expression of man. Do you? I have just received from the old Corner Book

⁵ *Supra*, p. 949.

Store, Haskins, *The Renaissance of the Twelfth Century* and Morley's *Diderot* — I expect pleasure at least from the last. Haskins in his first few pages seems rather verbose in explaining that the changes of history are not accurately adjusted to centuries — but I have only peeked into him. Also I doubt if he writes very well — but eminent authorities are cited in the advertisement to show that he is a swell on his theme. Also the book is from the Harvard University Press. Why is it that the literary style is so different from that of talk? I am apt to hear the words as I read (which shows, I should think, that I am a slower reader than you) and the literary style makes them seem unreal. I don't see why men should not write in the same rhythm as they talk. Owen Wister once told me that a sentence of mine puzzled him until he read it aloud as he thought I should and then he understood it. Which I am far from quoting to my credit — but my prejudice remains.

I have received two copies of an English paper — *The Commonwealth*¹ which no doubt you have seen, and which simplifies the problems of life. "The rent of land belongs to the people; the first duty of government is to collect it and abolish all taxation" — People for the most part believe what they want to — their postulates are rooted in their total experience and life. Those of us who flatter ourselves that we have intellectual detachment only get one story lower in our personality — and in the end are trying to make the kind of world we should like — I doubt if I should like the world desired by *The Commonwealth*.

I haven't said a word about the great excitement of these parts — Lindbergh. What pleases me is that one hears no detracting word — genius provokes envy — but when a man bets his life on his own skill and courage and wins the bet against long odds no one can do anything but praise. We came away just before the Washington reception — our passage was engaged long beforehand and all arrangements made, so we didn't change. I am content to admire at a distance. I am as nearly idle as I can be — and enjoying beautiful days and beautiful country as much as it is in me to enjoy such things. Later I expect to diversify with *certioraris*. Them we have always with us. Affectionately yours, O. W. Holmes

Devon Lodge, 28.VII. [sic] 27 [28 June 1927]

My dear Justice: It is good to know that you are settled in at Beverly F. and, as your letter suggests, in fine fighting trim. My mind at the moment is a little full of anxiety about Sacco and Vanzetti and I shall be glad when the next week is past and their future is certain. Otherwise my spirit has been given sustenance by the decision of the Government here

¹ The periodical was edited by J. W. Graham Peace for the Commonwealth Land Party.

to reform the House of Lords on the worst possible method.¹ That is one of the few subjects I really know something about and I can, I hope, add a little to political wisdom anent it.

Life has been most busy since I wrote last. Exam papers, candidates for the doctorate, a new assistant to replace a young colleague who has gone to a better job, and dinner with Haldane and Graham Wallas. With the former good legal gossip of the kind you know well; and with the latter some first hand news of you and much explanation of why he is peculiarly valuable to Americans. He is a good soul but I think more incurably self-centred than any man I have ever met. He told me with simple honesty that he had done for this generation what Bentham did for the early 19th century and I hadn't the heart to be other than credulous. He selected as the important Americans people who seem to me quite irrelevant; and he expatiated on the theme that organisation produces the great thinker which I cannot possibly believe. Organisation will develop the great man's hypothesis, but it certainly does not produce the great man. And I must add a visit to York to speak where I saw the Cathedral bathed in moonlight — one of the most exquisite sights I have ever seen.

In reading, mainly Beard's two vast tomes on America, badly written and full of irritating *clichés* but immensely suggestive, and a couple of volumes of Hazlitt which gain — especially *Winterslow* — by rereading. Also a not uninteresting German novel by Thomas Mann called *The Magic Mountain* — rather long but with *aperçus* which made it worth the adventure.

Americans are beginning to turn up. Harvey Davis,² a Harvard physicist was the first, a clever and attractive fellow buried in thermodynamics and emphatic that Henry Adams's ignorance of the second law of the same was quite devastatingly complete. Then Notestein from Cornell, a first-rate archivist who is editing D'Ewes' Journals and is full of curious lore upon parliamentary procedure in the 17th century. Of others I must not omit a charming American instructor who explained that he could only stay a fortnight but would like to be put on to a little problem about which he could put an essay into one of the learned journals. I explained

¹ In late June the government had indicated its intention at an early date to propose reforms in the constitution of the House of Lords. The plan as outlined would have reduced the size of the Upper House, made provision for the choice of a part of its members by the House itself, and given the reconstituted body a share in the enactment of revenue measures. To the Labour opposition, and to many Conservatives, the reforms as outlined seemed to be designed to frustrate democratic government and to serve as a means of forestalling socialism.

² Harvey Nathaniel Davis (1881–); Professor of Mechanical Engineering, Harvard University, 1912–1928; President of Stevens Institute of Technology, 1928 to date.

that I had no suggestions to make — so we talked, and learning that he was interested in Bentham I suggested that Bentham's *Constitutional Code* needed reprinting with an introduction. He did not know of it; but by the time he is ready to leave I am sure he will have it done for he set to work on it like a body of mechanics assembling a Ford car. Nor must I omit a Chinese Christian who was returning to take up a professorship in China where he would teach Sociology, Chemistry and pastoral theology. Who can doubt the elasticity of the human mind?

Of book-hunting I have done none, alas, for I reserve my money and my energies for Geneva. I did, indeed, at York pick up a copy of the not infrequent *Testament* of Colbert which had belonged to Mme. La Pompadour and was so bound that one caught the atmosphere of the lady pretty clearly; and I bought there for a guinea a fine mezzotint of Reynolds' Burke which seemed, if the dealer was honest, to be the second (and best state). But these were trifling asides.

I had an interesting dinner here of half-a-dozen young Tories from the House which I wish you could have attended. Two of them were really able, and defended their creed with something of the gusto of Thrasymachus. Two were traditionalists who wanted the eighteenth century back and thought of the Rockingham Whigs as the best in English history. One was a fire-eating Fascist whose simple remedy for discontent was the wall and the firing-squad. The other was a Disraelite Tory who was nearer to me in sympathies than many of my own party and about as attractive as they make them. They were most pleasant lads who still retain a good deal of that *noblesse oblige* which is so very attractive at its best.

Other news, for the moment, I must postpone. College, heaven be praised, ends this week, and then I can settle down to reading and some writing, and a greater stability of date in writing to you than has been possible in this ghastly term. Tomorrow, I add, is my birthday and I spend it doing Quaritch thoroughly.

My love to you both,

Ever affectionately yours, H. J. L.

Beverly Farms, July 1, 1927

My dear Laski: This morning there comes a delightful and desired letter from you busy about many things to me as near idle as I can be. I have read little — the most serious book: Morley's on *Diderot*. Morley seems to me a razor not a sting — and the finest edge of his thought a little blunted by respectability. I did Haskins, *The Renaissance in the Twelfth Century* — a great wrong by the first impression that I told you of. I found him very interesting and instructive — although already it seems years since I finished the volume. Yet I believe my last letter — answering your last, was written as I was beginning it. It seems as if I had men-

tioned *The Road to Xanadu* — I can't have. I didn't read the whole of it but the best 100 pages, a search into the materials for "Kubla Khan" in what Coleridge had been reading is an admirable bit of work. Not a name, not a thought, hardly an adjective that is not traced, so that all that was needed was a dream, opinion and genius — and the writer fully appreciates the genius needed to produce the poem. Then a French tale — *La nuit kurde*, by Bloch — of which I do not see much use, depicting the melodramatic doings of a young warrior, of which it is enough to mention his emulating a spider by screwing a woman while he killed her by biting and, put in as an extra, chewing her throat. Then a few pages in a long book about a woman who writes would-be poetry and tales by the ouija board.¹ Pretty much drool to my mind — but exciting the admiration of the commentator. It is a comment on man — when he absorbs himself in a system or an atmosphere — Catholicism — Hegel — Spiritualism — it doesn't matter what, he soon loses all relation to outside standards, and becomes a satellite of the sun around which the system turns. I don't see how we can help smiling at ourselves — so arbitrary, irrational and despotically given are our ultimates. I feel as if I were wasting my patrimony when I am not producing articulate words and merely receiving impressions that lose their form when I turn my back. An artist would feel just the opposite — each yielding to a compulsion of nature as he yields to the outside world, and having no better justification than that he desires to live. Why? Why do I desire to win my game of solitaire? A foolish question, to which the only answer is that you are up against it. Accept the inevitable and do your damndest. Meantime I do receive impressions in my daily drives that are full of charm and that at least enrich life if they don't enrich me. I can't get it quite straight in my memory whether Redlich came to us last winter — but I agree to all that you say about him. Frankfurter and Mrs. called the other day and gave me much pleasure. His *Progress Report of Harvard Survey of Crime and Law in Boston* impresses me greatly and makes me believe when heretofore I have been a sceptic. I should rejoice if he produced what promises (at least to my ignorance) to be a great and noble work. I had only a glimpse of Gooch and wished that I had seen more — but I suppose he was busy and so my talk ends in the doubtful hope that this will catch tomorrow's boat.

Affectionately yours, O. W. H.

Devon Lodge, 9.VII.27

My dear Justice: It has been a hectic fortnight since I wrote last. One of my young assistants resigned; and I have been chasing round the universities to find a suitable successor. Also I have been busy helping the Labour

¹ Probably Walter Franklin Prince, *The Case of Patience Worth* (1927).

Party to draft a scheme for the reform of the House of Lords.¹ That has taken time, and has been a finicky business even though it has been most interesting. In the way of pleasure certainly the most pleasant thing was to be a guest at the annual dinner of the Society of Teachers of Law.² Sumner and Tomlin³ were the other guests and, especially the former, they made admirable speeches. Sumner has a most attractively dry wit; and his observations on the new Law of Property Act and on the relations of bench and bar were brilliant. One remark of Tomlin's amused me, that lawyers were to commerce what barnacles were to a rock. F. Pollock was to have been the chief guest, but he took ill as you will probably know; and it was very moving to hear the quality of the tributes paid to him in sending him good wishes. We have had one or two dinner parties here for the American tourists, of whom certainly the best-looking and much the most pleasant was Freda Kirchwey,⁴ the sister of your old favourite, Dorothy La Rue Brown. Of the others I did not make very much; though I must in due decency add that they were all upright and purposive gents determined to see all whom they could see and more. One was so moved by my library that I had to part him forcibly from a copy of Jurieu's *Lettres pastorales* for which he had been searching for years. Another offered to publish my Mill mss with notes by himself as he was looking for suitable material. One professional wife (from Colorado) was quite wonderful. She told Frida that she did not like the West as "the social tone was low"; and on enquiry, it appeared that she herself derived from the upper reaches of Fort Wayne, Indiana! Oh God! O Montreal! Another visitor was a Frenchman who had some trouble with his digestive organs and was deeply interested in their operations. Introduced to a lady he explained to her in charmingly broken English his difficulties — as thus: "Lobster I vomit much; shrimps, a tiny vomit; strawberries, oh so sick; chicken pleasant and quiet; *pêche* Melba enormous vomit," until I, a generous soul, came to the lady's relief by side-tracking him on to Montaigne which was his other hobby.

In the way of reading I have not been able to do much. I read the new volume of McMaster⁵ with some enlightenment in detail but not much in principle. He seemed to me to neglect all the essential problems for

¹ See *supra*, pp. 955-956. Laski wrote briefly of the proposed reform of the House of Lords in "Present Tendencies in British Politics," 51 *New Republic* 192 (July 13, 1927).

² See *Journal of the Society of Public Teachers of Law*, 1928, p. 63.

³ Thomas James Cheshyre Tomlin (1867-1935), Baron Tomlin, Judge of the Chancery Division, 1923-1929; Lord of Appeal in Ordinary, 1929-1935.

⁴ Freda Kirchwey (1893-) was managing editor of *The Nation*, 1922-1928, and since 1937 has been its editor and publisher.

⁵ John Bach McMaster, *A History of the People of the United States during Lincoln's Administration* (1927).

the sake of conveying elegant chit-chat. I re-read after years *Tom Jones* with perfectly unrestrained delight — quite easily the greatest novel of the 18th century; and *Squire Western* is certainly one of the mighty triumphs of fiction. I read too a most interesting novel about India *An Indian Day* by E. Thompson which Knopf publishes in New York. I think you and Mrs. Holmes would find it a good book for solitaire-reading for it's a first-rate story and its portraits ring true. In the way of work books nothing very much. Felix sent me a book on administrative law dedicated to him and Pound by one John Dickinson, whom I do not otherwise know, but he seemed to me to say in 400 pages what he could fairly easily have said in forty; and he cited authorities to prove statements so obvious that one got thoroughly bored. In a very different line I thoroughly enjoyed a book by one Carcasone *Montesquieu et la constitution française au XVIII^{me} siècle* which, though too long, was thoroughly interesting as showing (I) the sources of Montesquieu and (II) the direct French influence up to 1790. It's the kind of book for which one is grateful partly because the job doesn't have to be done again and partly because the fellow saves one much and reasoning [*sic*] by careful summaries of forgotten books. I add that he suggested to me that a French bluestocking of the period (Mlle. Lézardière)⁶ sounds like a disciple who would richly repay investigation. Also a charming book on Diderot by Ducros which without novelties put its points forcibly and well. Oh! I must not forget a new life of Brougham by Aspinwall which put that extraordinary person in the clearest imaginable light; with an unforgettable picture of him in his old age sitting by the Woolsack, spitting on the carpet and wiping it in with his feet. If the book goes to the Athenaeum I hope you will take it out, for it would give you some pleasant hours.

I have bought nothing since my last letter owing to journeys and the need to spend in Geneva next month — always an occasion. I am anxious to get away; but I have three cases in the Industrial Court, an examiner's meeting, and a dinner with the P.M. before that interesting day can come. I note with interest your remarks on music. I don't disagree. I like it as one likes mustard with beef. But (I) I can't stand opera which seems to me incredibly artificial *e.g.* *Carmen* with a vast soprano of 60 bursting into song at impossible moments. (II) I can't stand musicians who, in my experience, are poseurs to an impossible degree, without views on life, and not really intellectual in any effective sense. But I add that I have great comfort from my pianola which stands by my desk and fills in some empty hours; and the other day I went with Frida rather under protest

⁶Pauline de Lézardière (1754–1835), disciple of Montesquieu and author of *Théorie des lois politiques de la France* (4 vols., 1844); her resolution to discover the principles of constitutional government through study of sources was formed when she was fifteen and never was weakened.

to hear some negro spirituals (if they are music) and was deeply moved thereby. But I grow profane.

My love to you both.

Ever affectionately yours, H. J. L.

Beverly Farms, July 8, 1927

My dear Laski: Your letter of the 28th comes this morning and gives me the usual pleasure. I notice with amusement the innuendo in your remark that I seem in fine fighting trim. Really I almost have sunk from the world of ideas. I read little and for pleasure — a French life of Disraeli¹ — and *Coningsby* — the last as far as I have got gives me pleasure and recalls the departed splendors of which I caught some last glimpses — e.g. a lady driving in London with two outriders — on horses of the same color as those in her carriage. But I am peeping back into glory — as yesterday I began what I never expected to read, *The Story of Philosophy* by Will Durant. I had thought of him as a *vulgarisateur*, and how could one who calls himself Will write anything on philosophy that I should care to hear (notwithstanding the case of our dear Chief Justice). But he is uncommonly good as far as I have got. Which means that I think his account of Plato excellent. He brings out authentically the hints of future thought — better than I ever have seen it done. He passes rather more lightly than I should if I were introducing a young reader over the considerable infusion of twaddle — and the ease with which the “merciless logic” of Socrates very generally could be smashed. Also he tells the story interestingly. Graham Wallas did not exhibit that self estimate that you mention. Nor did I think of him as specially self-centred — though I am not surprised. He used to come in rather familiarly, although by appointment, to luncheon — I am afraid more because he liked the victuals and the atmosphere than for any special interest in what I had to say. We found him pleasant and companionable — which I dare say was a mutual impression rather than anything more considerable. Gooch, I think I told you only looked in for a fleeting instant. I won’t read Beard — and possibly may accept your recommendation of Parrington’s *Main Currents in American Thought* — or I may hold myself excused by having tried once to get it and failed. I don’t hanker for it greatly. Your mention of your Chinese-philosopher brings up the thought of my friend Wu. I have not heard a word from him since the troubles in his neighborhood became acute and I am anxious. To return to Wallas — of course circumstances don’t make great men (though talking of William Allen I once said “great places make great men”)² but there is a French book of which Lester Ward gives an account, showing how large a proportion of the

¹ André Maurois, *La vie de Disraeli* (1927).

² *Speeches*, 51, 54.

greater names in France came from Chateaux and university towns — the moral being that there *are* mute inglorious Miltons — and that opportunity may bring out or the want of it obscure the first rate. I could jaw with you with joy.

Affectionately yours, O. W. Holmes

Devon Lodge, 18.VII.27

My dear Justice: A jolly letter from you cheered me immensely. I have just emerged painfully from the welter of examinations, together with a series of cases in the Industrial Court in which I have been torn between the obvious incapacity of the applicants and the low standard of living from which they suffer. It has been rather like *Muller v. Oregon*¹ again, in which you have to keep a tight grip on your head lest your heart run away with you.

And the callers have been innumerable. American professors, German civil servants, French students — an unending stream of people who want information about things for which it is most difficult to find words. And the students who want jobs, always the best jobs, or who want to write books and think that you write a book in the same way that you eat an egg. Life is a peculiarly full thing at the moment and I more anxious than I can remember to get away.

I add that there have been some admirable reliefs. First of all a novel by P. G. Wodehouse called *The Small Bachelor* which is one of the very funniest books I ever read, so much so that my guffaws in the tube where I finished it must have produced the conviction of my insanity in my neighbours. Then I read a most interesting book by one Coleman Phillipson called *Three Criminal Law Reformers* — quite excellent essays on Bentham, Romilly and Beccaria — and as I was pretty ignorant of the last and do not read Italian with any pleasure I enjoyed it greatly. Also a book you would, I fear, go miles to avoid has interested me much — by Féret, *La faculté de théologie à Paris 1400–1760*, which is extraordinarily informative about debates and ideas which are, doubtless, long dead but are still fascinating to read about.

Also I have been reading a first-rate life of Domat, the French legal philosopher, and have been much interested in the obvious relation between his ideas and Port Royal. And George Trevelyan's *Life of Macaulay* which is really almost as good as Boswell. I wish I had that healthy certainty about myself and my age that Macaulay had about himself and his.

I have bought some nice things. First the 1606 translation of Bodin in a beautiful copy. Next a copy of Justus Lipsius's *Politics* with all the appendices complete. A first edition of Pascal's *Pensées* out of pure vanity of acquisition and the fact that it was cheap, and an engraving of the

¹ 208 U.S. 412 (1908).

Romney Burke which would, I think, even make your mouth water. But I reserve myself for Geneva which I await with ardour.

We have been to several dinners. One at the Foreign Office to the Egyptian Prime Minister² was hideously formal — I was the only undecorated person there and though smiled upon most sweetly I felt constrained by the inability to speak forthrightly. I sat next to a dame who was weighted with jewels and thought no novel of quality had appeared in England since *Robert Elsmere*. She told me that the modern aristocracy was too cheap and that all the present evils were due to the fact that men and women nowadays married beneath their rank. She blamed the King strongly for allowing the Duke of York to marry outside the royal circle. I asked her what was to be done if they fell in love outside the "royal circle" and she replied with simple aplomb that they could take mistresses. But, alas, I could not answer her back and so provoke other pearls; and it spoilt my evening. We dined, too, with Graham Wallas who spent an hour outlining his new book to me. I gathered that its theme is the need for imaginative insight in statesmen which I take to be true and perhaps a book may be suitably written of the theme. An American lady there — Bacon if I heard the name rightly — was very bitter about Beard's book which she thought deliberately wicked; no one who read it would gather from it that Roosevelt was a great man. I suggested that perhaps he wasn't and she positively snorted. But my best story is due to Frida who went to a drawing-room meeting on birth-control addressed by a lady of, Frida says, the amplest ugliness she has ever seen in a human being. The lady's point was the supreme glory of chastity; birth control was bad because it was yielding to temptation without accepting responsibility. "I," said the lady, "have often been tempted," (I forget to add that she was an insistent virgin of 50) "but I have always accepted the consequences of my faults." Could anything possibly be more glorious?

You will be glad to know that Sir F. Pollock has made a first-rate recovery from his operation and is at home again.³ He is a remarkable fellow. A cousin by marriage of his whom I met the other day told me that at a challenge he turned a report of a House of Commons debate into good Latin doggerel without a dictionary. Which reminds me of an epigram now on the rounds which I must not omit:

I cannot help but think it odd
And jealous too of the Lord God
To go on ruling, when instead
He might give way to Birkenhead.

²King Fuad and the Egyptian Prime Minister, Abdul Khalik Pasha Sarwat of the Liberal Party in Egypt, were in London in July, laying the groundwork for efforts to draft a treaty of alliance with Britain.

³See 2 *Holmes-Pollock Letters* 201.

Which reminds me again of four exquisite lines of Belloc:

The accursed power which waits on privilege
And goes with women and champagne and bridge
Broke; and democracy resumed its reign
Which goes with bridge and women and champagne.

I think that worthy of the best of Martial.

My love to you both.

Ever affectionately yours, H. J. L.

Beverly Farms, July 23, 1927

Dear Laski: There are no such entertaining events, I fear, at this end as those you tell me of. I received from the Clerk's office a big bag of 31 *certioraris* — and I was willing to bet on my surviving long enough for it to be worth while to diminish the pressure of next term by examining them now. I returned them this afternoon. Also I have been visited by counsel in two cases of men about to be executed, seeking a stay until *certioraris* could be brought. They both came from McReynolds' Circuit, and as the first concerned two negroes who had been tried and convicted of rape in a court room protected by machine guns I now suspect that the lawyer wasn't very anxious to find McReynolds who dissented from an opinion I wrote in a somewhat similar case — but I did not think of that at the moment and granted the stay with a statement of the difficulties to be encountered further on.¹ I wrote to McReynolds about it and had a very nice letter from him this morning in reply. The second application I denied and if the expected came to pass the petitioners were executed last Monday.²

Cranks as usual do not fail. One letter yesterday told me that I was a monster and might expect the judgment of an outraged God for a decision that a law allowing the sterilization of imbeciles was constitutional and for the part that I had taken in other decisions that were dragging the country down. Then your friend (? — he quotes you) Professor Borchard of Yale sent me reprints of learned articles about the relation between states and law³ that so far as I read them I thought irrelevant to the decisions that I have written. I told him that I rather thought that you agreed with me (when the point I had to deal with was understood) and that if not I should think that you are off your beat and had gone astray. He seems a really learned man — but as he signed a brief which, if my memory is right, sought to hold the Soviet government liable in an action

¹ Not identified. The earlier case was, presumably, *Moore v. Dempsey*, 261 U.S. 86 (1923).

² Not identified.

³ *Supra*, p. 897.

here for things that it did under its law in Russia⁴ — I venture to doubt his judgment.

I have been too busy to read much of anything. I have on my table Spinoza's *Ethics* for rereading but haven't begun it. I think I told you of my other books — except perhaps Lord Chesterfield's *Letters* — a pretty good old sportsman — most of what he says and copiously repeats is sound — though I think his prohibition of laughter is narrow, and nowadays his horror at the thought of his son's learning to fiddle would seem extravagant. I saw for the first time the other day a little theatre in the woods that enchanted me — built by an Englishman named Buswell — a man with good looks and flattering manners. His house is part of the structure which might be four hundred years old — and looks down on a charming fresh water lake that he created, and away over the woods before the Eastern Point of Gloucester and the sea. My wife thinks that she yielded to my desires as I believe that I repressed my doubts to please her in getting tickets for and going to a diminutive presentation of *Faust* (opera) last Wednesday evening. It was our first outbreak for years and whoever was guilty we enjoyed ourselves greatly. They were very considerate to me, or to my age and advantages — and a pleasing dame gave her hand down the steps. I am glad of what you say of the expressions of good will etc. to F. Pollock. I had just heard and had written to him. I understand all is going well. I hope so as he is a very dear friend. Once more forgive this paper.

Affectionately yours, O. W. H.

Beverly Farms, July 28, 1927

My dear Laski: You will have gone to the Continent if not returned from it, when this reaches England, but your letter deserves an immediate answer.¹ I stopped here to order *The Small Bachelor* from the Old Corner Bookstore. Wodehouse can make me do what Lord Chesterfield says a gentleman should not do, break from the well bred smile into the loud guffaw, and as *nil humani* &c. I do not eschew the laugh — good old boy, Lord Chesterfield. To read his letters puts Johnson in the wrong. I have just read another life — the third down here — after *Liszt* and *Disraeli* — that of John Sargent by Evan Charteris — which interested me by its subject and its author — and when I read it by its execution. I don't think Sargent himself, however, would have interested me greatly, had I known him beyond a visit to his studio with H. James.² He was musical, to be

⁴ The reference is probably to *Wulfsohn v. Russian Socialist Federated Soviet Republic*, 266 U.S. 580 (1924), in which the Court dismissed the writ of error to the New York Court for want of jurisdiction.

¹ *Supra*, p. 962.

² See "The Letters of Henry James to Mr. Justice Holmes," 38 *Yale Review* 410, 432 (March 1949).

sure, and that may stand for complexities not otherwise manifest; but a man whose aim was to set down what he saw strikes me as a little too concrete for my more abstract taste. Now I have a volume of *Everyman* with a translation of Spinoza's *Ethics* which I am rereading at odd minutes. Of course his theological machinery seems to me *passé*, but his conception of the universe — his view of good and evil as human not cosmic formulae, &c. make him come home to me more than any philosopher of the past — even though he does think he has got God in a trap when he snaps logic on him.

I envy you your purchases such as the first edition of Pascal's *Pensées*. If I weren't so old I should try to snap up a morsel here and there, but it seems foolish at my age — although I don't regard a moderate and intelligent avarice in the same way. I think I have observed before that I am trying to realize that a happy hour is an end in itself and does not need justification. So I oscillate between the extreme points of Rockport and Nahant and take in unimproving delight. I turned down by your house the other day in honor of you. I think it is unchanged, but that there are more structures in the neighborhood. I saw a paradise the other day. An English chap, good looking with conciliatory manners, having acquired cash, as I take it, built for himself a house and theater on an eminence in a wood from which you look down on a fresh water lake before it on one side — and in front, over the forest, the Eastern point of Gloucester and the sea. There is near a mile of wandering through the wood, a public park, before you reach this hall on the edge of it and feel as if it were fourteen hundred and something. Taking the look of this man and the theatrical characters &c. I should think that there might be wild moments there sometimes. I broke through all my rules and went with my wife to a miniature opera, *Faust*, and enjoyed it hugely. It looks as if before long we should have more places worth seeing here than in Europe — were it not for the fatal absence of history. But I recur to my axiom — that not only all society but most romance rests on the death of men — and where the most men have died there is the most interest. A good time to you and may Geneva not disappoint.

Affly yours, O. W. H.

Grand Hotel du Planet
Mont-Roc, Sur-Argentièrè

Haute-Savoie, France, 2.VIII.27

My dear Justice: We arrived here on Sunday after an enchanting journey. Views like Annecy and its lake — where Rousseau lived with Madame de Warens — and Chamonix are beyond words. But here is enchantment on enchantment. The hotel looks out on the *massif* of Mont-Blanc — an awe-inspiring spectacle, the sun on the endless snow and the dull grey

rocks which look grim even on the brightest day. And the perpetual sound of the waterfalls is like silver music. One or two discoveries will interest you. The hotel belongs to an old guide, famous in his day, named Terraz. He used to take Leslie Stephen up the Matterhorn in the seventies, and was a warm friend of Whymper.¹ He remembers Stephen warmly and cherishes a photograph of him, all beard and eyes. The first day we were here we hit upon Stanley King² and his new wife on their honeymoon — you remember the late pseudo-philosophic lady whom Felix and Lippmann cultivated — and a little later there turned up Manley Hudson of the Law School who is ending a world-tour here. Well! It is a great place for a real rest, and even after two days I feel that many of the cobwebs have been blown away.

I have read a good deal lately, above all Lowes's *Road to Xanadu* which came to me for review. Like you, I found it a little difficult at first, especially a kind of forced brightness about the style; but as I read on I became completely captivated and was thoroughly convinced that its theme is justly made. Also it pleased me mightily to have independent confirmation of my loathing for Wordsworth who irritates me even more than the theatricality of Byron with his oppressive and officious goodness. And I am sure out of my own experience that the deliberate activation of the unconscious is an invaluable way of attaining ideas. One finds so often that a theory hangs just beyond the fringe of capture and that search is illusory. Then to forget the chase and turn elsewhere does mean that an unexpected moment produces the idea effortlessly often enriched and decorated. Mind you, I think Lowes illustrates the process without explaining why the process is. But that I do not doubt is the ultimate mystery.

My last fortnight at home was a nightmare. I sat on the Court for six days with two appalling cases full of detailed statistics which meant the endless compilation of tables of new wages for half-a-dozen grades of work. Then, when the President and I had agreed, my Treasury colleague dissented, and we had another vast arithmetical effort in order to reach a compromise.³ I was, too, plagued to death by a variety of visiting professors, all of whom had to be lunched and provided with introductions or bibliographies. Also two committees at the House of Commons before

¹ Edward Whymper (1840–1911), artist and mountaineer, whose ascents of Mont Pelvoux and the Matterhorn in the 1860's were great achievements in the history of Alpine climbing.

² Stanley King (1883–1951), lawyer and businessman, later President of Amherst College from 1932 to 1943, was at this time engaged in business in Boston. He had recently married Margaret Pinckney Allen.

³ See cases #1327 and #1328, 9 *Industrial Court Decisions*, 477, 486. The other two members of the Court were Harold Morris, President, and Frank Pick.

which I had to give evidence and one of them asked for a plan which meant two heavy days work that I ought not to have been asked for. Then old Ashley⁴ the economic historian died suddenly, and as I had a high admiration for his work, I felt it a duty to accept the Manchester *Guardian's* request for an estimate of him; so I spent a good many hours polishing my sentences — the most difficult of all types of writing I think. And the sum of it was growing fatigue and irritation and I rejoiced as never before when I saw the cliffs at Dover moving away.

Our plans here are simple. We shall stay, I think, until the end of August. In between I shall slip into Geneva. But beyond that I shall vegetate here with a few books and a paper on the Natural History of the Cabinet which I want to write — light-hearted and amusing.⁵ Take this, please, as an interim announcement of survival. Next week I shall be capable of philosophy.

Our love to you both.

Ever affectionately yours, H. J. L.

Grand Hotel de l'Abbaye

Talloire, Lac d'Annecy, Savoie, 9.VIII.27

My dear Justice: With us, as I expect with you, everything is obliterated except the decision of the Sacco-Vanzetti case.¹ Frankly, I do not understand it. The evidence, on any showing, seems to us at this distance incredibly thin. The whole world revolts at this execution; and it will remain, with the Frank case and the Mooney case, one of those judicial murders which make the mind reel. I agree fully with all that Felix says of Lowell in this case. Loyalty to his class has transcended his ideas of logic and of justice.

We stayed in the mountains a week. It was magnificent, but the height did not suit Frida with the result that we moved to this place which is adorable. I do not know if you have ever seen this lake — a jewel nestling amid mountains. It is the centre of Rousseau's country — a few miles from Les Charmettes where he lived with Mme. de Warens. The hotel

⁴ Sir William James Ashley (1860–1927), economic historian whose long academic career had taken him from Oxford to Toronto, Harvard, and Birmingham Universities; author of *The Tariff Problem* (1907), *The Economic Organisation of England* (1914), and *The Bread of Our Forefathers: an Enquiry in Economic History* (1928). An anonymous notice of his career, presumably by Laski, is in the *Manchester Guardian* for July 26, 1927, p. 18.

⁵ "The Personnel of the English Cabinet, 1801–1924," 22 *Am. Pol. Sci. Qu.* 401 (May 1928), reprinted in *Studies in Law and Politics* (1932), 181.

¹ On July 27 the Advisory Committee submitted its report to Governor Fuller, and on August 3 he announced that he found no justification for intervention to prevent execution of the death sentence. On August 23 Sacco and Vanzetti were electrocuted.

itself is a partially transformed eleventh century abbey and we dine in the great refectory with the stone walls and the great beams still in perfect preservation after 800 years. Near by is where Taine wrote most of his history; and in the village is the tiny house where Berthollet² the chemist was born. I wish I could even begin to describe the beauty of the scene; but you will find it in the early books of the *Confessions* and I will not strive to compete. I add that it is curiously different from anything I have ever seen — the French word "*doux*" describes it. There is nothing remotely savage except the mountains beyond and the peasants seem to cultivate every inch of the soil with vines and walnut trees. The lake itself is a miracle of sapphire blue and in the evenings the varied lights on the water make pictures as exquisite as I have seen.

Of writing I have done but little. I have played a little at a paper on the personnel of the English cabinet, about which I have collected some most amusing statistics and I have done bits of a paper on the idea of fundamental law in France [in?] 1789. But I cannot claim serious devotion in either. Partly I have been too lazy, and partly I have been disinclined to do other than reflect and read and walk. I add that we did a glacier before we left Argentière and it induced in me sheer horror. You I believe used to climb in the old days, and I only venture a humble tribute of grace to your nerves.

So I have mainly read and talked. A fine detective story — *The House of the Arrow* — by A. E. W. Mason which I warmly recommend *pour rectifier le solitaire* certainly the best of its kind I have read since *Trent's Last Case*. Carcassone's *Montesquieu* which on close reading is extraordinarily illuminating and convinced me of my pet hobby that most of the history of the period needs to be redone. To understand him I am sure that one has to get the perspective of what has gone before — Dubos,³ Boulainvilliers,⁴ and the general controversy over the nature of French constitutionalism under the *ancien régime*. And when one does that it becomes clear that there is a real relation between institutional development in France and England. Also Montesquieu so viewed throws light on the fact that he and Machault⁵ and Voltaire are the heads of a sect which professed Anglomania and were vehemently opposed — certain observations of Rousseau about English liberty showing the degree of doubt

² Claude Louis Berthollet (1748–1822); distinguished French chemist who was born near Annecy and began his studies at Chambéry.

³ Jean-Baptiste Dubos (1670–1742), *abbé* of Notre Dame de Reillons, and learned historian of the origin of the French nation; author of *L'histoire critique de l'établissement de la monarchie française dans les gaules* (3 vols., 1734).

⁴ *Supra*, p. 922.

⁵ Jean-Baptiste Machault D'Arnouville (1701–1794), controller general of France who raised a hornet's nest of clerical protest in seeking to reduce the ecclesiastical immunities.

which Montesquieu and his school aroused. Certainly *the* historical book on M. is still to seek. Ehrlich's paper in your number of the *Law Review*⁶ was the best general treatment of him; but it left much to be done in the light of issues which E. hardly could know about. I read also a history of the University of Paris by Jourdain — a very revealing book — which made one realise how very modern and Anglo-Saxon academic freedom is; the quarrels of the Sorbonne in the 17th century are monuments of perverted dishonesty in which one professor seeks to do in his colleague over differences of doctrine without a shadow of suspicion that decency would forbid. Also I read Dostoievski's *Brothers Karamazov* which it is difficult, as you read it, not to recognise as the greatest novel in the world.

I have been living, as you can imagine, in a milieu where conversation is not easy to discover. A French priest whose main interest is the miracles of Lourdes; an Englishman home on leave from Egypt to whom bridge and tennis were the essence of life; another Englishman who has no interest outside climbing and building bridges; a French professor of chemistry who is still living on war psychology and devoting his years of retirement to the proof that all German chemical discoveries were made by Frenchmen. I tried to persuade him that such quests were a waste of time, but he was, of course, unpersuadable. I had an amusing hour with the *curé* who was distressed that I did not share his interest in Lourdes and tried to explain to me that he had seen miracles there — I offered scepticism in terms of physiology and he was all on fire with indignation. I asked him if he had ever considered the metaphysics of miracles and he answered that I had the disease of curiosity. His only worry, I gathered, was that there were no signs of the conversion of England to Rome. But he thought a great conversion, the Prince of Wales, for instance, might take place and then God would work a conversion in those cold English hearts. You will be amused to hear that the only Americans of this generation he had ever heard of were Cardinal O'Connell,⁷ President Roosevelt and Chief Justice White. I asked why Roosevelt and he said that he was in Rome when R. visited the pope!

Our love to you both. I hope your weather has permitted a voyage to Rockport. And that you have read Parrington.

Ever affectionately yours, H. J. L.

Beverly Farms, August 18, 1927

My dear Laski: A letter from you, delightful as usual, shows you on your vacation, and rather unusually, I should say, taking an incidental pleasure

⁶ *Supra*, p. 77.

⁷ William Henry O'Connell (1859–1944), Catholic Archbishop of the See of Boston from 1907 to 1911, when he was elevated to the cardinalate.

in nature. You couldn't help it with Mont Blanc in front. The Swiss mountains, as my father said to me before I first went to Europe, stretch your mind. Meantime I am in the main quiet here. But I have not escaped the Sacco Vanzetti case. Stirred I guess by Felix, Arthur Hill has come in to the case and last week appeared here with other lawyers and reporters tagging on to try for a *habeas corpus* from me — relying on a case I wrote.¹ They were here two hours and a half and said all that they had to say and I declined to issue the writ.² I said that I had no authority to take the prisoners out of the custody of a State Court having jurisdiction over the persons and dealing with a crime under State law — that the only ground for such an interference would be want of jurisdiction in the tribunal or, as according to the allegations in the negro case that I wrote where a mob in and around the court ready to lynch the prisoner, jury, counsel and possibly the judges if they did not convict, made the trial a mere form. They said these facts went only to motives (I suspect having another Massachusetts case of mine in view) and what was the difference whether the motive was fear or the prejudices alleged in this case. I said most differences are differences of degree, and I thought that the line must be drawn between external force, and prejudice — which could be alleged in every case. I could not feel a doubt, but the result has been already some letters telling me that I am a monster of injustice — in various forms of words, from men who evidently don't know anything about the matter, but who have the customary readiness to impute evil for any result that they don't like. The house of one of the jurymen was blown up two or three nights ago — and I was deeply touched on the evening after Hill's departure to find Tom Barbour at my door wanting to bivouak on my piazza against the chance of trouble. Of course I said no, and I found later that he had just returned from four nights in sleepers where he can't sleep as the berths are too short for him, and was nearly worn out. Generous and gallant, *hein?* The papers this morning say that Hill announces an intent to try me again in connection with an application for *certiorari*.³ So I have no perfect peace. I believe I mentioned that I was reading — I now have read, Spinoza's *Ethics* — the most valuable result a new article in my Bill of Rights viz: No man shall be held to master a system of philosophy that is fifty years old. Comment. All that any of the philosophers has to contribute is a small number of

¹ *Moore v. Dempsey*, 261 U.S. 86, McReynolds, J., dissenting.

² Holmes's opinion of August 10 denying the writ of *habeas corpus* is in 5 *Record of the Sacco-Vanzetti Case* (1929) 5532.

³ On August 20 counsel for Sacco and Vanzetti presented a petition to Holmes praying for an extension of time for applying to the Supreme Court for writs of *certiorari*. Holmes's opinion denying the petition is in 5 *Record of the Sacco-Vanzetti Case* 5516.

insights, that could be told in ten minutes. But, especially if he is a German, he has to make a system and to write a big book. In 50 years, more or less, the system goes to pot; posterity doesn't care for it — but you have to read the book to get the author's *aperçus* — and novices think that the system is the thing and that they must master it, whereas the old hand knows that really it is simply working two tons of sand to get a tablespoonful of gold, and probably he knew the substance of the insights as part of his general knowledge, before. I care more for Spinoza's than for the other old ones but I don't believe his postulates or yield to his logic. What I care for is an attitude and a few truths that are independent of his machinery. If I have said all this before, forgive me. I have sent for two books by (Ludwig?) on *Napoleon* and *Kaiser Wilhelm*. I think you praised them and John Morse⁴ strongly admired them. I being empty and lazy concurred. I have done over 50 *certioraris* for next term. I shall send this to London as safest.

Affectionately yours, O. W. Holmes

Hotel Victoria, Geneva, 19.VIII.27

My dear Justice: I need not tell you how much I sympathised with your difficulties in the Sacco-Vanzetti case. I cannot see that you had any alternative, and I suppose the event must move to its tragic end. But I wish I could make people like Fuller realise the immense damage his action has done to the good name of America. This case has stirred Europe as nothing since the Dreyfus case has done. And to me, at this distance, and with the reliance I have on the substantial accuracy of Felix's picture, it seems that it is indeed another Dreyfus case.

Minora canamus. We came here on Wednesday after ten quite perfect days at Talloires. We are staying just outside the town with an amazing view of Mont Blanc from the window. My first visit was to my bookselling friends of which, perhaps, the results should be described as solid rather than brilliant. I got a further substantial body of contemporary Rousseau criticism, some invaluable pamphlets on the Oath of Allegiance controversy under James I, some good contemporary criticism of Montesquieu. The prizes I wanted were not; but I would not part with any of my purchases. And the joy of the chase, the running of one's eye over row upon row of musty volumes with the special palpitation that comes when you hit on an attractive title — these are thrills you know and share with me. I have seen a good deal of the League of Nations people here, and found

⁴ John T. Morse, Jr. (1840–1937), cousin and intimate friend of Holmes, who wrote the first biography of Dr. Holmes, and was editor of and contributor to the American Statesmen Series of biographies.

them very attractive, especially the German Dufour¹ and the Englishman Salter.² I heard, too, a dazzling address by the Spanish critic, Madriaga,³ which was, doubtless, persiflage, but done with a grace and a verve which were most attractive. The amusing (and amazing) thing to me is the vast population of Americans one sees. They are, literally, unending — professors of both sexes, travellers, business men. You are the conquerors of the world. These folk have an easy certainty of their position, a determination to know, a relentless obstinacy (especially the women) which leave me breathless. One professor from Iowa presented me with four of his books on a subject that does not interest me one iota, and was unmoved by my dual protest (a) of ignorance (b) of an inability to read Midwestern local history seriously. I had to take them and in the face of his relentless determination I merely succumbed. Another lady asked me for a bibliography of the principal political writers 1200–1900 and was, I think, genuinely offended by my gentle hint that I was on a holiday. But I have heartily enjoyed talking to the officials who are extraordinarily interesting from the very novelty and width of their experience. It is a new thing to watch a committee at work on which an Italian, a German, a Japanese and an Argentinian are all arguing. And I have had a jolly dinner here with my old friend Lowes Dickinson — whose books you know — and we dissected life as gentlemen should. He has a mellow sweetness about him that is irresistible; and if only he did not think Goethe's *Faust* the supreme human achievement, it would be difficult for us to disagree.

I was glad to note that you saluted Rockport for me; glad, too, that you are with me on the subject of P. G. Woodhouse [*sic*]. Here I found one I had not known before called *Sam the Sudden* and it tickled me as much as any of the others. To more sober reading I make no pretence, partly out of the pleasure of talk with people, partly because I am on holiday. We stay here till Wednesday when we leave for Paris. We shall stay there until the 29th and then home. I shall not be sorry, for more than a month of idleness is bad for anyone.

My love to you both.

Ever affectionately yours, H. J. L.

¹The reference is probably to Albert Dufour Feronce who in 1927 was Under-Secretary General of the League of Nations.

²Sir Arthur Salter (1881–) at the time was Director of the Economic Section of the League Secretariat.

³Salvador de Madariaga (1886–), man of letters and diplomat, at this time was director of the Disarmament Section of the League Secretariat. His address to the Geneva Institute of International Relations in August 1927, is printed in *Problems of Peace, Second Series* (1928), 124.

Beverly Farms, August 24, 1927

My dear Laski: Your last letter shows you stirred up like the rest of the world on the Sacco Vanzetti case. I cannot but ask myself why this so much greater interest in red than black. A thousand-fold worse cases of negroes come up from time to time, but the world does not worry over them. It is not a mere simple abstract love of justice that has moved people so much. I never have read the evidence except on the limited points that came before me. As I remember the time of the trial I always have appreciated the difficulty in getting a dispassionate verdict when everyone was as excited as everyone was in those days. I also appreciate what I believe was the generous knight-errantry of Felix in writing his book. But I see no adequate available reasons for the world outside the U.S. taking up the matter and I think your public and literary men had better have kept their mouths shut. There were two applications for *habeas corpus* to me, the first presented by Arthur Hill, the last on different grounds the night before the execution, by other counsel,¹ both of which I denied, as I thought them beyond my power, on the case made. There was also an application for a stay until the full Court could consider granting of a *certiorari*, which also I denied, as I thought no shadow of a ground was shown on which the writ should be granted.² There was no way that I knew of in which the merits of the case could be brought before us. Of course I got lots of letters — some abusive, some precatory (and emotion from women) all more or less assuming that I had the power of Austin's sovereign over the matter. (Forgive my mentioning so contemptible a personage.) The most sensible talk I have seen was a letter by Norman Hapgood, who recognized the humbug of talking as if justice alone was thought of. Not having read the record I do not consider myself entitled to an opinion on the case — my prejudices are against the convictions, but they are still stronger against the run of the shriekers. The lovers of justice have emphasized their love by blowing up a building or two and there are guards in all sorts of places, including one for this house for a few days, which left to myself I should not have thought of.

A review of *Circus Parade* by Jim Tully in the *New Republic* begins "Jim Tully is so goddam hard-boiled that his spit bounces,"³ which made me guffaw when I read it and again when I remembered it in the watches of the night. The only reading I have is *Napoleon* by Ludwig, but I have to confess that his great Napoleon rather bores me. Living in a somewhat narrow groove I am not interested by men whose view of life does not

¹ The published records do not contain this motion or Holmes's ruling thereon.

² See *supra*, p. 971, note 3.

³ 52 *New Republic* 26 (Aug. 24, 1927).

interest me. I shall take refuge in some more *certioraris* that have come. Whether it was as my wife thinks the long jaw with Arthur Hill over the case or something that I eat, this being the time when I am likely to have a little trouble, I have been below par for a few days but I am on the up-grade with nothing more than the occasional discomfort of wandering zephyrs in the cave of the winds. I wish I had a book that hit me where I live. But all is for the best in the best of possible worlds.

Affly yours, O. W. H.

Beverly Farms, September 1, 1927

My dear Laski: Your Geneva experiences are interesting and some of them amusing as you meant them to be. I am interested rather specially at Dickinson's opinion of *Faust*. It is a theme on which I am not settled. As to part 2 I hold my peace, silently not believing those who think it great. It seems to me that you can't rescue a drama that does not interest as such by asserting ulterior significances. If you put a thing in dramatic form your first obligation is to make it a success as a drama. My recollection is distant, but it is of a piece in which the artists happening to be available at the moment are introduced to do their specialties. Song and dance by Homunculus etc., etc.

The echoes of Sacco and Vanzetti grow fainter, but I got an abusive letter this morning and the police will guard my home at night for a day or two more. The *New Republic* had an article that seemed to me hysterical.¹ My secretary² who turned up last night and who worked with Felix thinks that he wisely dropped the subject after the case was passed upon by the Governor's committee and that his general frame of mind is to drop the matter as finished. So far as one who has not read the evidence has a right to an opinion I think the row that has been made idiotical, if considered on its merits, but of course it is not on the merits that the row is made, but because it gives the extremists a chance to yell. If justice is the interest why do they not talk about the infinitely worse cases of the blacks? My prejudices were all with Felix's book. But after all, it's simply showing, if it was right, that the case was tried in a hostile atmosphere. I doubt if anyone would say that there was no evidence warranting a conviction, and as to prejudice I have heard an English judge sock it to the jury in a murder case, in a way that would have secured a reversal in Mass., if the jury had not, as I thought rightly, corrected the prejudice of the judge. As you know, I believe, I held that I had no power

¹ Probably "The Ominous Execution," 52 *New Republic* 30 (Aug. 31, 1927).

² Arthur E. Sutherland, Jr., of Rochester, now Professor of Law at Harvard; his father (1862-1950) was a Justice of the Supreme Court of New York, 1906-1919.

to grant a *habeas corpus* and that I ought not to grant a stay, if I had power, on an application for *certiorari*, as I thought there was no case for the writ. I wrote an opinion on the spot, but left it open to apply to another Justice. They then went to Brandeis who declined to act on the ground that he had been too closely connected with the case. My secretary says that thereafter a N.Y. paper called *The Worker* had in its window "Brandeis, Pontius Pilate," and followed the analogy describing him as washing his hands of innocent blood, etc., etc. How can one respect that sort of thing? It isn't a matter of reason, but simply shrieking because the world is not the kind of a world they want — a trouble that most of us feel in some way. Well, I shan't expect to bore you about this again.

Not much else to tell. I have been seedy but am all right again. Lady Bryce has been here and gone. I have read very little, Ludwig's *Napoleon*, nearly finished. Napoleon bores me. W. Lippmann's *Men of Destiny* came from him yesterday. I see admirable writing in it. It winds up with a pretty thing to me when I was 75³ — *eheu fugaces* — that really touches me. Mighty good talk about others so far as I have read. Also Diehl, *Figures byzantines*, vol. I, borrowed yesterday and not looked at. I heard an interesting suggestion from him, that when the Crusaders took Constantinople the people there regarded it as an incursion of barbarians. Huns, who couldn't appreciate the beautiful Greek civilization.

Affectionately yours, O. W. H.

Devon Lodge, 2.IX.27

My dear Justice: Along with this, there goes to you a copy of *The Statesman*.¹ It is, of course, mainly a *jeu d'esprit*. But it is full of commonsense; and I hope it will pleasantly pass an idle hour.

I found your very interesting letter about Arthur Hill's visit when we came home on Monday. Of course you had no alternative. If you sought to probe motive the state courts would have no *raison d'être*; and though I think the decision a tragic one, I see no other course. The negro case, obviously, is not in *pari materia*.² The execution deeply affected me. We were in Geneva when it happened. The riots there were very bad; and both in Geneva and Paris the ill-feeling against Americans is obviously profound. What has angered thinking people most is the incredible re-

³ "To Justice Holmes," 6 *New Republic* 156 (March 11, 1916).

¹ Sir Henry Taylor's *The Statesman: An Ironical Treatise on the Art of Succeeding* (1832) had just been republished with an Introduction by Laski.

² *Moore v. Dempsey*, *supra*, p. 971.

mark of Borah³ that it would be "a national humiliation if any account were given to European protests." As one Frenchman said to me, "if we have to mobilise five thousand troops to protect American lives and property, we are at least entitled to consideration."

We left Geneva last Wednesday and went on to Paris. There I had a really thrilling time. The first day I gave up to showing Diana historic sights; and the *ancien régime* through the eyes of an intelligent child absorbed in Dumas was an interesting novelty. I discovered that she admired Richelieu and loathed Mazarin; but that Dumas had made Fouquet her real hero. In the Louvre she interested me much by a distinct and even passionate preference for Leonardo's Beatrice d'Este to everything else there; and a loathing for the masses of Delacroix which augurs hopefully for the future. I add that we were lucky enough to find a small collection of Méryon's etchings, and I spent a very satisfactory morning with them. The next day I devoted to people. A breakfast with Briand. Lord Crewe⁴ who was there, said that Austen Chamberlain loved France as though she was a woman, to which Briand at once replied, "*Mais la France doit exercer les privilèges d'une maîtresse.*" He was very troubled by the breakdown of the Anglo-American naval conference⁵ and vehement in his denunciation of naval and military experts. "*Ce bon Foch,*" he said, "*pense que les frontières de notre France doivent être à San Francisco à une côté et à Vladivostock sur l'autre.*" He is an amazing creature — like Felix in his capacity to get the best out of people; unlike him in his inability to keep to one theme for more than ten minutes. I lunched with Aulard, the historian of the French Revolution and met some of the younger men in that line. They were all learned and "*bien documentés*" but like footnotes in the great man's work. One was at work on one fragment, one on another; none of them had large interests beyond his section of the archives. They all talked well, (all Frenchmen talked well) and I was very struck by their general agreement that Lord Acton's book was much the best treatment of the Revolution in English. In the evening I dined with my old friend Chevalley, about whom I have written to you in the past. We had a great talk — first on Montaigne, then, with a clever *abbé*, whose name I did not catch, on the degree to which Bossuet borrowed from Hobbes and Spinoza (more than Frenchmen like to admit) and finally with dear old Lévy-Bruhl on Bayle in which he rejoiced my heart by affirming the philosophy of scepticism against a handful of *les jeunes* who

³ William E. Borah (1865–1940); independent Republican, ardent isolationist, and United States Senator from Idaho, 1907–1940.

⁴ Robert Crewe-Milnes (1858–1945), first Marquess of Crewe, was Ambassador in Paris from 1922 to 1928.

⁵ The United States, Great Britain, and Japan had participated in a naval disarmament conference at Geneva in June. It had broken up, however, without agreement.

were all ardent Bergsonianism and made the *élan vital* a vehicle of transition to an ugly sort of fascism in which action for its own sake was important and thought in the nature of a disease. Saturday I spent book-hunting with great results. On the *quai* I found every work of Richer,⁶ the first of the 17th century Gallicans, which I did not already possess; one a copy in a superb tooled binding. I got a heap of contemporary attacks on Montesquieu — some of them rare beyond words. I got a fine Descartes, and a very fine first edition of the *Tractatus Theologico-Politicus*. But what, I think, pleased me most was to buy a first edition of the *Nouvelle Héloïse* for twelve francs and sell it across the road to a fashionable bookseller for 600 francs. That enabled me to get a large number of modern works I wanted especially a new and delectable edition of Montaigne. The Sunday we spent out near Versailles — showing Diana the castle in the morning and then wandering further afield. In the evening we dined with Larnaudé the late dean of the Paris Law School. He was a scholarly old gentleman but absolutely wrapped up within the confines of French law. He knew the names of Littleton, Coke and Marshall but of no other exponents of the Common Law. He had read Maitland but thought him inferior to Viollet; and he was uncertain whether the greatest of all lawyers was Cujas or Domat. It was an interesting type of mind in its narrow way — sure of itself, inflexible, putting aside doubt or criticism with an exquisite politeness as completely irrelevant. I could not make out why he had asked me to dine until I discovered that he had read an essay of mine on administrative syndicalism and wanted to explain its errors to me. But his standpoint was that of the second empire (when he began to teach), and when I quoted eminent living Frenchmen in my support, he put them gently on one side and with a serene self-confidence that was charming. Only once did I disturb his complacency and that was when he mentioned Mlle. de Lezardiére as an 18th century writer hardly inferior to Montesquieu. I explained that her qualities were chiefly due to her fidelity to the *Esprit des lois* and the old gentleman was so astonished that I knew her that he could only repeat “Tiens! Elle est connue en Angleterre!” It was like peeping through a curtain at a bye-gone age.

I expect this will reach you as Washington begins to loom near. Who is your new secretary? I have a faint hope still that next spring may see me in Washington.

Our love to you both.

Ever affectionately yours, H. J. L.

Devon Lodge, 10.IX.27

My dear Justice: Let me say one thing about the Sacco-Vanzetti case and I have done. I was strongly for re-trial because (I) Felix in whose judg-

⁶ *Supra*, p. 907.

ment I have great confidence made me feel that the evidence was not satisfactory; (II) because the conduct of the judge during the trial did not suggest an open mind; (III) because at least one of the jurors had prejudged the case. I don't think the analogy of the negro is in point because there the problem of political prejudice does not arise. I add again that I am warmly with you so far as your Court is concerned. I do not think it was in any aspect your business.

Since I wrote to you last I have spent a week-end in Manchester and some busy days here. In Manchester I had one glorious experience I would not easily have foregone. I stepped from the train and at the barrier found a policeman's hand descend heavily upon my shoulder. Looking up I heard a genial Irish voice say with satisfaction, "Well, Toscini, we have been expecting you; come quietly." I never refuse an invitation that has the prospect of interest so I walked quietly and silently to the police-station. I was then charged as Luigi Toscini with being concerned in an Italian jewel-shop robbery in Manchester on the 6th August and was asked if I had anything to say. I said yes, and explained who I was. After a minute or two my accent must have been revealing as the entire police force of Manchester seemed to arrive and apologise. I was then driven into a whiskey with the Inspector and spent the next three days in receiving grinning salutes from policemen on the streets. You will admit that it was a distinguished arrival. I admit that, on the evidence of photographs, it was a perfectly reasonable mistake. The police were so relieved that I made no fuss that I do not believe I *could* now be arrested in Manchester.

While there I had one interesting dinner with Alexander the philosopher. He pleased me by saying that F. Pollock's book on Spinoza was easily the best; and he would have pleased you by his insistence on the superiority of S. to other philosophers. He interested me greatly by his admiration for Bergson and told me that in his judgment the most arresting figure in European philosophy today is Meyersohn [*sic*] and in America Morris Cohen. He made little of Dewey whom he thought overrated and thought James a psychologist with a turn for metaphysic. He told me, too, one good story of a Roman Catholic student who, on hearing him relate the history of Giordano Bruno accused him of Anti-Catholic prejudice. Alexander explained briefly the facts and asked what else he could say. The student said that Bruno's morals were bad. A. asked him for evidence to which the student replied that he did not indulge in unsavoury literature! When I got back I found that Frida had arranged a jolly dinner with Gilbert Murray who explained to me why I do not find comfort in Greek poetry as I should. He recites it really exquisitely so that in the onomatopoeic phrases the very purpose seems to stand out, *e.g.* in πολύφλοιςβοίῳ he can make the thing ring in your ears. But he amused

me by putting Homer at the top of the world and poor Virgil in a fairly low class. I said I thought this the typical prejudice of the sophisticated for the simple as when the jaded businessman weeps over a Barrie play. He talked magnificently about Euripides and the *Greek Anthology*; and he made us both see more beauty in Greek adjectives in Homer than I should have thought possible in an ear so insensitive as mine. When he ended up by denouncing Proust I could have hugged him, for the latter bores me beyond words. Yet some one else there called him the most significant Frenchman in fifty years, and he was a man who really knew French literature. Yet I find elaborate descriptions of the insignificant really foreign to the effectiveness of art. Are you a Proustian and have I my shoes on holy ground?

I have done some reading in a mild way. A pleasant book on English economic history by Lujo Brentano¹ — the old Vienna economist — a wonderful feat for a man of 80, well abreast of modern research. A charm-book on Saint-Simon, the diarist, by René Doumic which I commend to you. A really informing work by one Allen [*sic*] Nevins on the American states 1773-89 which I thoroughly enjoyed and Fanny Burney's *Evelina*, which is adorable. Birrell, whom I met in the street yesterday, told me that *Cecilia* (which I have not read) is better and the *Diary* better still. But I am not a diary-lover unless of people like Barbier who really effectively paint the portrait of an age, and Birrell is so omnivorous that he can even read the poems of inspired 18th century washer-women and bricklayers (see Tinker, *Nature's Simple Plan*) and enjoy them. He told me that the other day he lunched with Lloyd-George who was cursing some Parliamentary colleagues for wrongheadedness; upon which Birrell said he always defined liberalism as the power to suffer fools gladly in the conviction of imminent salvation. I think you did meet him once, if I am not mistaken. Really he is one of the most delightful people in England.

I have had some luck, too, in the book-buying way. I got a very fine set of Saint-Simon's political writings for a ten-shilling note; and a splendid Parkman at auction for even less. I tried hard for a set of the Supreme Court Reports but it soared beyond my purse, and I had to content myself with the history by one Charles Warren for ten shillings which I bought on the ground of cheapness without any other knowledge of value. I invested, too, in a fine De Maistre in 6 volumes at a shilling a volume. All this from the library of a defunct master in chancery who had taste and discrimination.

Our love warmly to you both.

Ever affectionately yours, H. J. L.

¹ Presumably Lujo Brentano, *Eine Geschichte der wirtschaftlichen Entwicklung Englands* (3 vols., 1927-29).

Devon Lodge, 24.IX.27

My dear Justice: It has been an exciting fortnight; and I have only now written because I have been overwhelmed. First I had to act in the Industrial Conciliation Court of the Cooperative Societies, which took three days; but I emerged as arbitrator with the satisfaction of knowing that henceforth thirty thousand employes are henceforth entitled to ten days sick leave with pay in the year. It was a grim struggle, especially the difficulty of disclosing no views in the private discussion after evidence, in case it should be left to me (as it was) to decide; and I had the pleasure of hearing that neither side knew what I should do. Then I was suddenly asked to act as arbitrator between the Treasury and certain civil service unions on the meaning of an agreement about over-time (it sounds Irish) for non-overtime classes in the clerical division and that meant three days with dull documents and an attempt to establish where reasonable overtime without pay might be said to end. I decided that a non-overtime class ought to give 52 hours without extra pay and receive a grant beyond that. As neither side was completely happy with the result (the Treasury opposed all concession, the men wanted the pay to begin at 44 hours) I imagine I did substantial justice. But you will imagine that these cases have meant some grim hours of work.

But some pleasant interludes. Last night we had MacDonald to dinner and talked over the universe. He is a fascinating creature. To watch him is like observing a really temperamental prima donna. He is brilliant, jealous, eager for applause, quick, incoherent — the last person who ought ever to lead a party. He dismayed me a little by his vivid certainty that God is on his side; hardly less by his perception of politics as a struggle in a theatre between contestants for the limelight. I was amused, too, by his pose as a connoisseur of the arts — which seemed to mean legislation against Romneys and Gainsboroughs leaving the country; and I do not think he appreciated my remark that I rather wanted legislation to make Goyas and Degas come in. He spoke most warmly about America where he seems to think the future of culture lies; and with the Calvinist's contempt for Latin countries. I told him that he would have got on admirably with John Adams and found Jefferson wanting in delicacy and taste. Then, too, a dinner with Sankey to meet Scrutton L.J. Do you know the latter? I thought him quite one of the best minds I have met in many a day — quick, wide-reaching, passionate about his work. He appealed to me greatly by avowing a complete scepticism *in re* the greatness of Cairns and clinched my admiration by his remark that judges should learn more political economy. He told me that as a young man he met you at F. Pollock's in the 'nineties but only as an undergraduate meets a master — a great fellow. So too is Sankey who got off the remark that Mansfield

made law with the air of Moses receiving the Tables from the Lord. And I lunched with Churchill who has been reading American history in the vacation and is full of envy of A. Hamilton. Nothing, I told him, better explains his own temper than that he should be unmoved by Washington and Lincoln, incapable of seeing anything in Jefferson, miss the significance of the West, and fasten on the one man in the record, who, with big purposes, was anti-democratic, anti-idealistic, and incapable of ultimate generosity. It was also an amusing index to the culture of our good and great that until he read Hamilton's life, he had never heard of Marshall C.J. and did not know that Madison was a President of the U.S. I went also to dinner to Arnold Bennett who was like a very clever *nouveau riche* asking you not to forget the power of the purse, even while he emphasised his contempt for mundane things. But he did interest me by explaining, as I thought with great power why, to a novelist, Dostoievski is by far the greatest man in his line and why the *Brothers Karamazov* is the proof of it.

In reading, several things I ardently recommend. First and foremost C. E. Montague's *Right off the Map* — one of the cleverest and best written satires upon *mores anglicanae* I have ever come across. Do, do read it over solitaire. Second a delightful edition of Voltaire's *Lettres philosophiques* by Lanson full of fascinating information about its sources and influence. Third an attack of great power and interest by a Chinaman named Hsiao on my political views called *Political Pluralism* by which I hope I profited as certainly I enjoyed it.¹ Finally a tip-top *Histoire de Jansénisme* by Gazier — which was to me full of illumination not only as completing Sainte-Beuve, but also as making one see the place of the movement in three centuries of French history. When your first batch of opinions are written I hope it may come your way. Frida interrupts me at this point to say (rightly) that I must recommend Denis Mackail's *The Flower Show*, especially to Mrs. Holmes, for it really hits off the contours and hierarchies of an English village with the most amusing slyness. Next week there is a new P. G. Woodhouse [*sic*] with which I hope to salute the beginning of the academic year.²

Sir, I have had a great book adventure. I got a catalogue from Paris over which my heart panted as the hart after the brooks. Four of the Jurieus, three contemporary criticisms of him Hauréau's *Philosophie scholastique*, Bayles' *Oeuvres diverses*, a run of the best ten years of the *Mercure de France*. So I decided that these things come but once in a lifetime — sold the *Encyclopedia Britannica* presented by an extinct uncle, telephoned to Paris and they arrived. One Jurieu, *La décadence des empires* was as lovely as it was rare — in contemporary red tooled mor-

¹ Reviewed by Laski, 54 *New Republic* 197 (March 28, 1928).

² Not identified.

occo with the arms of Vauban the economist-engineer.³ Including the telephone, I spent only a ten-pound note; and as I got sixteen pounds for the *Encyclopedia*, I am awaiting most anxiously for the fellow's next catalogues as this was A-L and M-Z has Montesquieu, Pascal, Rousseau, Voltaire as prospects over which the eyes may light and the jaws work as they did with the young clerks when Porthos dined with the wife of the Procurator to get his equipment for the campaign.

Another week of freedom and then term begins. But my department has doubled itself and I have as a result two new young men. So I am hopeful that the year will be restful and that I can largely bury myself in French history.

Our love to you both.

Ever affectionately yours, H. J. L.

Devon Lodge, 2.X.27

My dear Justice: A letter from you last night was a happy prelude to term.¹ I have had a busy week, with no interludes that can be called pleasurable. Students, committees, reports from morn till eve. Some of the first were promising; and there was a Chinaman whose English was so devastating that for an hour I thought he wanted to write a thesis on the history of the alphabet only to discover that he wanted in fact to write on the history of the abacus in accountancy. And I entertained a queer professor of criminal law from the middle west who was anxious to know how our police arrest *filles de joie* and prayed my aid for help in seeking permission to go round at night with the police. He explained that he had done this in Berlin, Paris, Vienna and Buda-Pesth. I said that it was perhaps a vocation like any other but did he in the end find out more than the fact that arrests took place where there was undue solicitation. He said that so far he had no clue to the technique, which made the investigation more important than ever, so I made him happy by a letter to the Commissioner of Police. Another queer soul was a lady from Buffalo who came with an introduction from an old pupil of mine. She had heard that I was good at finding books; could I tell her where to get a complete set of first editions of Charlotte Yonge. I tried to be as serious as I could and only at the end asked her why she wanted that gravy-like writer. It turned out that someone in Buffalo's "literary circles" had made a hit by having a complete set of first editions of Ouida's works and this was the spirit of pure rivalry. So I sent her away happy and felt that God must really feel sometimes that I have the temper of an angel.

³ See, *supra*, p. 737.

¹ The letter referred to is missing.

Nor must I omit to tell you of the vicar of Hadleigh, Suffolk, who wrote to me in hot indignation for reprinting Taylor's *Statesman*. An immoral book; nothing about Providence in it; a mean code without any sense of how God works in our lives. So for four pages, and enclosed a copy of his Parish Magazine with a marked article on success proving that there cannot be success unless God blesses your work. I wrote back thanking him for his communications which I assured him would have the attention they deserved.

I have had little time for reading this week. But I have read and enjoyed Maistre on the Gallican Church, which is a superb piece of controversy, and a very good novel by one Beatrice Seymour called *Three Wives*. Also I have been delving a little into some contemporary mss about Bossuet in the British Museum and discovered some notes about him as a young man which are exceedingly interesting. The writer (evidently some kind of church spy to Mazarin) says he is able and learned, but above all things compliant and anxious to suit his opinions to those whom he encounters. Now that is, I think, the real Bossuet. For if you take the crucial instance of the Declaration of 1682 ² I could I think show from his correspondence (a) that he was an ultramontane before the Declaration (b) that he did not believe it while he was drawing it up and (c) that he did not believe it afterwards. Yet he has the impudence to refer to the Archbishop of Paris as a valet for his strong Gallicanism. But I enclose a piece I have written on Bossuet for the Manchester *Guardian* which is at least an exercise in careful denigration.³

I picked up one nice thing this week — a copy of the Abbé Saint-Pierre's *Polysynodie*. Now I am waiting anxiously for replies to orders I sent to Nice and Paris for books. The latter had a copy of Buonarroti's *Histoire de Babeuf* (which I have never seen for less than 600 fr.) for 20 fr., and the former had what, from the description, I take to be a first of La Bruyère for two dollars. The latter is interesting because, as I expect you know, La Bruyère altered the first six editions in the direction of continuously greater severity towards the court; and it would I think be worth while tracing the evolution of that extra dose of indignation. And I bought a fascinating *Dictionnaire des livres Jansénistes* by a Jesuit (1724) which has given me a training in the art of invective such as you would envy me.

² Bossuet, distrustful of the Jesuits and therefore wary of supporting Papal claims of supremacy, was reluctant to acknowledge all the claims of Louis XIV and therefore in drafting the Declaration of the French Clergy in 1682 sought to find a middle ground between the Gallican and Ultramontane positions.

³ "The Tercentenary of Bossuet," 17 *Manchester Guardian Weekly* 254 (Sept. 30, 1927).

Well! I must begin to get my papers together for my lectures. I hope the voyage to Washington was accomplished in comfort. Take care, and do not have tornadoes in I Street.

Our warm love to you both,

Ever affectionately yours, H. J. L.

Washington, D. C., October 9, 1927

My dear Laski: A delightful letter from you, 24th, deserves more than it will get — a too frequent happening. For until this moment I have been almost overtaxed. The usual business on arrival, but more than usual, with an overhanging atmosphere of *certioraris* filling every crevice, and an abnormal Washington heat that tackles the vitals. The result of everything was that at the conference yesterday p.m. we didn't finish the work and I have no opinion to write today — for which I am thankful, as it seemed too much. I shall have my hair cut and try to finish the *certioraris* on hand, knowing that a new lot will come tomorrow. My last secretary, Corcoran, was admirable in doing all that was possible to save me trouble and he seems to have imparted the ferment to the present one — Sutherland — son of a N.Y. lawyer and ex-judge. Of course I read nothing but records of cases. I am much interested by what you say of MacDonald, Churchill, Scrutton *et al.* — but the *Histoire de Jansénisme* must wait for better days. Montague's *Right off the Map?* — possible — but I don't do much in present affairs outside the job. I remember reading Hauréau's book 1000 years ago — and being surprised to see how much Descartes owed to the scholastics — but in what particulars I have forgotten. There is a good article about Brandeis in the *Nation* of October 5 by Norman Hapgood.¹ I believe that Brandeis deserves all the praise that Hapgood gives him and I am glad to have him get it. There is inserted a sort of caricature sketch of B's face that I don't think pleasant, although by way of caricature it catches something of him. The brethren seem in fair condition except Sutherland, who is off for a month. I don't think there is any organic trouble — but he is rather down, I infer. I have not seen him.

My hair is cut with opposite effect to Sampson's [*sic*] but still instead of working all the afternoon I should like to lie down and sleep in spite of a long night in bed.

When we called on the President he asked me if I had enjoyed the summer. I said, Yes — towns that had celebrated their 300th birthday — noble cliffs — and broad beaches with young ladies who didn't wear trousers. He said when he reached my age perhaps he should notice them — and that ended my conversation with the Executive.

Now for the *certs.* — damn them!

Affectionately yours, O. W. H.

¹ 125 *Nation* 330 (Oct. 5, 1927).

Devon Lodge, 15.X.27

My dear Justice: You must forgive my lapse in not writing last week; but I was in bed with a nasty dose of 'flu which made the reading of P. G. Woodhouse's [*sic*] *Sam the Sudden* the only bearable form of activity. But I am all right again; and if a little wan, still fit for the job.

A good deal has happened since I wrote last. First a first-rate case on the Industrial Court in which I had the joy of making the Crown abandon the claim of privilege for a document they quoted without putting in; a practice which I think abominable. Second a jolly tea-party with Houghton, your Ambassador here, whom I like greatly and with whom I found much community of spirit, especially after the discovery that he had the right views about you and Brandeis. Then a dinner here for Allyn Young, our new Professor of Economics, who comes from Harvard. He is an extraordinarily able fellow, a little slow, and without the razor-edge I like in a mind, but perceptive and wise and intelligent. . . . So life, aided by Mr. Wodehouse, has had its pleasant interludes. Also I won a guinea from Sankey, J. by predicting the new Appeal Judge (Greer, J.)¹ whom he proclaimed an impossible appointment. How goodly are thy tents O Jacobs!

One or two nice things have come my way. I found in a French catalogue an excellent copy of Dreyfus-Brisac's great edition of the *Social Contract* — the one edition which (a) gives you a sense of its real relation to the MSS (b) the other parts of Rousseau which amend and illustrate it and (c) parallel texts from the other mighty which show definite parallelisms of thought. I have found it very useful. First it convinces me that near to Book III Rousseau changed his mind on much as a result of meeting Montesquieu. Second I think his attitude to religion and a good deal in particular of the *religion civile* was determined by a real acquaintance with Spinoza, and third I think that any effort to make Rousseau the author of a really consistent body of political doctrine is quite impossible. He is simply a great prophet in the same sense that Isaiah or Carlyle was a great prophet. Also I have been reading (to review) *The Correspondence of George III*² the last *roi de métier* we ever had and I find it most interesting. Character B, Brains E, obstinacy A+, ignorance D; yet, strangely enough, the letters show quite clearly that merely to remain for long at the centre of affairs gives an authority and a flair unmistakable even in a petty and stupid man. The misinterpretation of America is won-

¹ Frederick Arthur Greer (1863–1945), first Baron Fairfield, Justice of the King's Bench Division of the High Court, 1919–1927, Lord Justice of Appeal, 1927–1938.

² The review has not been located.

derful. Right on from 1765 he thought the Americans revolutionists — because they denied the validity of the Stamp Act. Yet to my thinking their view was much that of the Channel Islands today or of Ireland before the Act of Union and could have been supported by a very remarkable body of evidence. And I have read a charming book on Pascal by a young colleague of mine named Soltau, a little too religious for me, and hostile to Jansenism at all the points where I should be favourable, but a most skilful portrait of much the greatest Frenchman of the 17th century. And I went to the funeral of Mrs. H. G. Wells — a dear little soul with whom Frida and I have passed many a pleasant hour. If, by the way, you cared to write him a note I think he would like it much for he is very unhappy. (His address is Whitehall Court, London, S.W.1.) I know he cares much about you and would welcome a word of sympathy.

Of other things, there is not much to report. I refused to sit on a government committee to deal with the relations of police and prostitutes, on the good ground that I knew nothing of the problem, and was amused to find that they replaced me by an Oxford don of whom Rivers the anthropologist once said admirably to me that he was constitutionally incapable of seeing the distinction between a man and a woman. Also I refused to go as a fellow to Oriel — after the freedom of London the narrow environment of an Oxford College would, I am sure, be intolerable, though, of course, the leisure would be attractive in its way. Frida interrupts me to insist that I must strongly recommend you both to read Walter Lippmann's book of essays which she says are admirable. I have not seen them yet, but she is a very good judge.

Our love to you both. I write amidst fog such as only England can create.

Ever affectionately yours, H. J. L.

Washington, D. C., October 28, 1927

My dear Laski: A delightful letter from you, just arrived consoles me by its explanations of delay, since I also have slipped a cog. I have been so pressed and oppressed by work that I simply haven't had a chance. But the weather is clearing — we adjourn next Monday and all my cases are written, up to date. Let me answer one or two items that you mention. *Imprimis* — I did read W. Lippmann's essays before I left Beverly and quite agree with your wife, uninfluenced, I swear, by the reprint of some words about me when I was 75. I thought the notices of Mencken and Sinclair Lewis A-1.

2. I will try to write a line to Wells — but one is so helpless on such occasions — the more so that the Godly common-places are not available, as he wouldn't want 'em and I could not use 'em.

3. I am glad you got your guinea, but it shows how old I am that the names now are all unfamiliar to me. Why don't they put in Leslie Scott?

4. Why do you call Carlyle a great prophet? Because he shows the influence of the Old Testament? He seems to me a man of imaginative humor who didn't care a damn for the truth except for its decorative possibilities and had no particular insight into it — present or future. Perhaps I go a little farther than my fighting line — but I indicate my animus.

I can understand you as to Rousseau although I doubt if prophet is the word that I should use, when I consider his reputed influence on what happened in France and his very manifest influence on German philosophy (Kant and Hegel).

I have read nothing except records and a short *Essay on Conversation* by Taft's brother and *The "Canary" Murder* — a good detective story. It amused me to see in the advertisements quotations from notices of a former and I presume similar work that spoke of it as not only a story but literature. This one has some slight affectations of culture done in French, put into the mouth of the detective — but seemed to me to want everything except the fundamental one — a real puzzle, the answer concealed to near the end, and things kept moving. I believe that in some past time I have heard of or even read works of literature but from September 30 to October 31 I have known and shall know nothing but law. I may have remarked before — but if so I repeat — that it is harder work to live at 86 than at 26 — 56 or 76, but still the gusto has not departed. My wife tripped and fell when she was out star gazing one night at Beverly and I don't think that she yet has recovered from the shock — but we went out early this morning and I took an hour off for an adorable drive in the Rock Creek Park. Don't tell me that you have to go north for brilliant color. It was an ecstasy. Brandeis generally comes with me as far as my house, driving home, and we go by the Potomac and around the Lincoln Monument, to get the wrinkles out a little. He is as good as ever. I owe a line to Frankfurter — I owe everybody — but hope is not dead.

Affectionately yours, O. W. Holmes

Devon Lodge, 23.X.27

My dear Justice: I picture you as a ghost, palely wan, wandering amid a vast ocean of *certioraris*. I hope you will emerge scathless, and not, like your most distinguished predecessor, disappear as the clock strikes midnight.

I have been pretty overwhelmed. A case at the Industrial Court, a lecture (very good!) to the Fabian Society on Victorian Democracy, a dinner with Hewart, C.J., a couple of articles, and what you will find in the

last paragraph of this letter was much for a week. The Fabian lecture pleased me, for Bernard Shaw came out with his typical onslaught on the Victorians as hostile to new ideas. He gave as an example the refusal of Henry Sidgwick to listen to him at the British Association in 1888 when he urged the taxation of urban land values. Sidgwick, he said, denounced the plan as criminal and left the room in disgust. Whereupon I produced Sidgwick's own account of the debate, written to J. A. Symonds the day after, full of eulogies of Shaw and saying that the general position completely convinced him.¹ I have never seen Shaw at a loss before; but this was really what your compatriots call a "sock-dologer." How amiable and kindly a thing is a good memory. Hewart interested me a good deal. He is obviously clever and quick and pungent. But he has no *weltanschauung*; he knows nothing of law in the sense that Pollock knows law; and he has real contempt for those who seek to know law in that way. He is an attractive intellectual *parvenu*, really attractive because so alert. It was amusing to contrast him with a real German *gelehrte*, Gerland of Jena,² who was there. The latter was heavy, but he really knew, and his obvious horror at the ease with which Hewart committed himself on things of which he knew nothing *e.g.* the German law of libel was most attractive in its way. Gerland had the scholar's horror of committing himself without full independent examination which is, I suppose, fatal to action, but, still, a quality in favour of which I keep a sneaking prejudice. I must add that there was a French *abbé*-academician there, Brémont,³ whose talk was quite marvellous and quite as marvellously wrong-headed. He was a mystic *dévo*t who has written illimitably on S. François de Sales, Pascal, Newman *et al.* and he thinks James's *Varieties of Religious Experiences* the ultimate key to everything. He was anti-papal in the French Gallican way, but with that curious certainty that Rome will ultimately triumph with which argument is quite impossible. When he spoke of the Pope as the embodiment of the Holy Spirit I asked him how he reconciled that view with the technique of the conclave as given *e.g.* in such things as the election of Alexander VI and he replied almost casually that these things cannot be understood by an unbeliever. I said "You mean that a sense of evidence is distressing" and I gather that he meant that, but preferred to say that faith has knowledge to which knowledge itself is a stranger.

In reading I have got through Ludwig's *Bismarck* with some pain. I

¹ See A. S. and E. M. S., *Henry Sidgwick: A Memoir* (1906), 497-498.

² Heinrich Gerland (1874-1944), distinguished jurist; author, *inter alia*, of *Die Englische Gerichtsverfassung* (2 vols., 1910).

³ Abbé Henri Brémont (1865-1933), humanist churchman and critic; author of *Histoire littéraire du sentiment religieux en France* (11 vols., 1915-33).

was interested, but I think he faked his evidence to get a conclusion which is certainly not there. I also read the *Life of Henry Wilson*, the Field Marshal who seems to me to have revealed his own foolishness in his diary about as fully as a man can. It is a fair proposition, I think, that diaries of men who enjoy their own nudity ought not to be published unless they are as interesting as Pepys. Otherwise it is really too distressing for the observer. I read, too, a Trollope unknown to me before *The London Tradesman*, sketches of types, which, without being mighty, was full of his shrewd insight and would, I am sure, greatly please Mrs. Holmes. He is particularly good and wise — if you share my outlook — on the need for reticence in tradesmen.

I now end with my real story. I saw a pretty box in a second-hand furniture shop which (1 foot by 2 feet) seemed to me a kind of 17th century desk and Louis XIV in decoration. It was locked and there was no key. I asked the dealer the price and was told it was three pounds. I thought Frida would like it and brought it home as a present. We got in a locksmith to make a key and when this arrived it contained 80 uncut tracts of the Fronde — many of them really rare, and not one of them available in any modern reprint. Some were things I badly needed for my book; eleven are not at the *Bibliothèque Nationale* and 36 are not in the British Museum. Do you wonder I kept this to the end, or that for at least a month I shall go about with a light in my eyes?

Our love to you both.

Ever affectionately yours, H. J. L.

Washington, D. C., November 3, 1927

My dear Laski: The ghost that you say you picture is solidifying down a bit. I got through my work yesterday and through some business bothers today and when my nerves have quieted down I shall feel like a human being. I am doubting whether to say a few biting words in a dissent on the differences between a penalty and a tax, but don't quite know whether I shall take the trouble.¹ If I haven't acknowledged the things that you have sent me, I have appreciated them — and just now was rereading the admirable appreciation of Bossuet,² which makes me think of Racine about whom I once wrote to you. When one strikes fundamental differences of taste, especially national ones, one can but bow the head (keeping up inside a silly little desperate conviction that one is nearer the center of things than the other fellow). We think of poetry as uttering the unutterable, and don't care a damn for the most admirable lucidity as compared with the most confused hint at the infinite. So

¹ *Compañía General de Tabacos de Filipinas v. Collector*, 275 U.S. 87, 99 (Nov. 21, 1927).

² *Supra*, p. 984.

coming nearer to Bossuet we don't warm up to allegorical figures of Commerce and Plenty and other abstractions — and coming nearer still we prefer one touch of passion or of first-hand perception of truth to well modulated tremolo and majestic platitudes. But I dare say a noble oration might be made in defense of platitudes as against our transitory novelties, even though hot ones.

I wish we sympathized as much with regard to the social structure as we do in many of our literary and philosophical judgments. But I haven't your intellectual respect for Shaw. I think he is a mountebank — though a very gifted one and I don't care tuppence what he thinks. But I dare say I should like to see him. Your box story is beautiful — suppose the dealer should sue you for the value of the contents that you have appropriated. I dare say your answer would be complete — but an argument could be made. Suppose instead of pamphlets the contents had been current money — say £1000 — do you think that you could maintain a claim of title? If I thought the difficulty serious I should not speak of it — but I regard it merely as a slight stimulus to inquiry. I suppose that I ought to give some time to a German essay which the writer sent to me intimating that it was more or less inspired by my book and was important, but there is so much bread in proportion to the sack in most German theorizing that I shiver on the brink.

I wish I might hear something of Wu in China. My fears become serious. I suppose you have not heard anything. I feel as if I might be on the verge of culture in some form — at least when I get through a little book *Rationale of Proximate Cause* by Leon Green, Assistant Professor of Law at Yale — dedicated to the memory of (a Texan?) John Charles Townes,³ "Lawyer, Judge, Dean, Teacher — He came nearer the ideal in each than any other man I have known" &c and I never heard of the paragon. The author is a cocky gent who dogmatizes about cases more than the notes in a law student's Review — and thinks he is revealing more than as yet I can see that he is. You tell of more interesting things.

Affectionately yours, O. W. H.

Devon Lodge, 5.XI.27

My dear Justice: I have had my annual dose of 'flu, which is the reason for my silence last week. However, it has gone, beyond a certain lassitude which is, I suppose, inevitable. And I have been busy entertaining W. G. Thompson,¹ the Boston lawyer, whom Felix sent to me. We both liked

³ John Charles Townes (1852–1923), Texan practitioner and judge, and teacher of law at the University of Texas.

¹ William G. Thompson (1864–1935) had been chief counsel of Sacco and Vanzetti in the later phases of the case.

him greatly. I like that type of Yankee simplicity and shrewdness. And he moved me much by his account of your patience and helpfulness when he and Arthur Hill interviewed you in August.

We have been about a little. The most interesting, I think, was a dinner with Tout the historian.² In a dry way, his work is, of course, first-rate and important. But the thing which attracted me was the fact that he is about to visit America for the first time, and he spoke of it as if he were *en route* for Abyssinia or Tahiti. Beyond an occasional historian in his own life, and some related academic people, it was literally an unknown idea to him. He thought of the Mayor of Chicago³ as the typical American; of the farmer as a Texan desperado who fired from the hip, or alternatively, through the pocket; of the businessman as someone engaged in organising a panic. What had completed his conviction that America was still trackless wild was the fact that in the hotel you do not put your boots outside the room to be cleaned. I disillusioned him as gently as I could. But he was obviously baffled and a little disappointed that he was not setting out on a desperate adventure. Frida thought I had made him angry because I had destroyed his excuse for not taking his wife.

We motored down to the Webbs for a day and had a good talk. I had an amusing argument with her about the influence of aristocracy in England. I said that France and America had discovered significances in social equality unknown here; and that the English religion of inequality had plastered our cabinets with third-rate men there for no other reason than care in the selection of their parents. She disagreed; but not I think with cause. Then we had Haldane to dinner and we fought with vigour over the allied question of the social influence of the monarchy. He tried to maintain its value as an imposer of standards. We challenged him to produce a single realm of life in which it had successfully done so; and I must say I think he made a sorry showing. Then a lunch with H. G. Wells who talked with unreproducible brilliancy about the modern novel. Dostoevski was, he said, the supreme practitioner, then he put Balzac; then George Eliot; then Fielding; then Turgenev. Of the Americans he put Hawthorne first, both for style and matter. He rated Henry James high but thought him bewildered by the convolutions of life with the result that he lost his way and never saw a man or a plot as an idea. We visited also Bernard Berenson the art critic. . . . Did you ever see him? . . .

In the reading line, bed of course has meant big opportunities. I read with real interest S. E. Morison's *History of the U.S. since 1783*, careful,

² See *supra*, p. 661. Professor Tout was a visiting lecturer at Cornell University in 1928.

³ William Hale Thompson (1869-1944); Chicago's mayor, 1915-1923 and 1927-1931, whose principal joy was in pulling the tail of the British lion.

sober and convincing narrative, with a pleasurable flick of the whip every so often. Then the *Greville Diary*, in its unexpurgated form; a disgusting piece of editing but full of gloriously malicious gossip and invaluable details on cabinet-making and the relation of the Crown to ministers. And on Brougham the new matter is as good as a play. He quite obviously had a streak of definite insanity in him. In a very different line I have got much instruction out of J. M. Robertson's *Short History of Freethought*, which is most revealing on the diverse currents of diverse ages, and their connections. Now and again he makes a comment which shows that he has not read the book he is writing about, but in general it is sound work with a proper Voltairian spirit of "*écrasez l'infame*." I reread *Adam Bede* with infinite enjoyment, and Wells's *Tono-Bungay*, which I incline to think is the best of all his writings. And a reprint of pamphlets⁴ gave me so much pleasure that I put a copy in the post to you. They are so short that you can read them in between arguments; and as some are old friends you will, I am sure, recapture some early moments of pleasure.

Our love to you both. I whisper that if some money comes in I have a half-formed plan of a month in America at Easter.

Ever affectionately yours, H. J. L.

Washington, D. C., November 16, 1927

My dear Laski: A good letter from you just opened and read. I am very sorry that you have been down and hope you will take care of yourself and be cautious for some time. I am glad that you liked Thompson the Boston lawyer. He made a very favorable impression on me. The further I get away from the S. & V. case the more I am convinced that it was hardly the occasion for kicking up a row that the facts did not justify. (I am not thinking of Felix's book.) *The New Republic* has seemed hysterical to me and when (if my memory doesn't deceive me) it talked of Governor Fuller's Sadic or Sadish thirst for blood I thought it ridiculous.¹ I am sure of the root of the adjective — after all liberals can talk twaddle as well as the old fogeys.

I had a fierce Sunday to do two cases — one a case that has been postponed because of doubts, the other an effort to escape by construction from declaring an act of Congress unconstitutional — Sutherland is ill and

⁴ *A Miscellany of Tracts and Pamphlets* (A. C. Ward, ed., 1927).

¹ Perhaps Holmes recalled an editorial comment of August 31, 1927, in which it was suggested that Governor Fuller and his advisory committee were "filled with an almost sadistic satisfaction" in seeing Sacco and Vanzetti as symbols of the poor and resentful classes in society.

it looks as if I should have not less than 3 with me — as against the more arbitrary result.²

Monday the work begins again and although I have had some heavenly days off I haven't had as many as I wanted, and I am not unreasonable in my demands, for I thoroughly enjoy the work when not too crowded.

I never wrote to Wells as you suggested. Somehow I did not feel familiar enough. Without somewhat personal relations it seems an intrusion to write to a man about intimate losses.

I have read nothing to speak of. I did reread Selden's *Table Talk* in Fred Pollock's new edition — with renewed appreciation of the shrewd sceptical old bird, who drew conclusions from his learning. I like your capacity for getting pleasure from all sorts of books. I read most of them I read with sweat upon my brow and noting how many pages there are and how far I have got. I think I mentioned Walter Lippmann's last volume as an exception. He is a born writer. How many big books I have read mainly to learn that I didn't believe them, because I was afraid to leave the fortress in the rear, although I was to find as I expected that the guns were wooden. But of course one learns something from them, even Karl Marx. Works intended for pleasure generally give me but a mitigated joy — e.g. your beloved (and F. P.'s Saint) Jane Austen. I imagine that I still could take pleasure in Scott, but I have been a little shy of later years. One big book of Dostoevski I didn't finish. I think it was called *The Idiot* — or some such name. It showed great gifts, no doubt, but I got enough. Ditto as to *War and Peace* though I finished it. I once read *Phineas* (*Phinn*, *Finn*?) with pleasure — but that was the end of Trollope.

If I am sardonic perhaps it is because a big filling has jumped out of my front tooth at a moment's pause from my writing so that I must haste to the dentist in the morning, just as I was promising myself to give him the go by. This world is transitory and a damaged judge is of little value. *Adieu* till next time.

Affectionately yours, O. W. H.

Devon Lodge, 13.XI.27

My dear Justice: This week has been rather saddened by the death of my brother-in-law. In a sense, it was a merciful relief. He had been wounded at the Somme in '16, and had been an invalid ever since, hardly knowing a day without pain. But death is always a stark fact, about which one can

² *Blodgett v. Holden*, 275 U.S. 142 (Nov. 21, 1927). In an opinion concurred in by three others, McReynolds, J., found portions of the Revenue Act of 1924 unconstitutional. Holmes, with Brandeis, Sanford, and Stone, JJ., concurring, found it possible so to construe the statute as to save its constitutionality.

say nothing; and it is difficult for a complete sceptic like myself to bring any comfort in these matters to people who (Frida, of course, apart) want essentially confirmation in what you believe to be illusion. I at least could not bring myself to give it; and I found that I was on the margin of brutality in a way which was very painful.

That apart, I have been excessively busy. I had to write the article on Bolshevism for the *Encyclopedia Britannica*,¹ and a hellish job it was. They gave me 5000 words; and I found I had committed the elementary sin of collecting enough material to write five or six times as much with ease. The only comfort I have is that I now move with assurance amid the mysteries of a hundred sects all with uncouth names; and, as yesterday when lunching with Churchill, an attack on Bolshevism generally can produce from me one of those tantalising diversions into the particular so irritating to . . . [one] who desires, quite naturally, to live on the plane of the universal. Churchill, by the way, was most amusing. After three years at the Exchequer he believes himself to be a financier of genius with a full insight into the great mystery of the gold standard. So I teased him gloriously by asking with the guile of simpl[icit]y all sorts of elementary questions. What did he think would happen if the South African gold mines doubled their output? Did he approve of Irving Fisher's theory of a compensated dollar? Didn't he think the burden of proof was on those who accepted the quantity theory of money? If 4.86 is better than 3.19 for the pound sterling why is not 5 better still? He did not (neither did I) know the answers; but all his satellites waited for papal bulls which did not come. As all this came on top of a denunciation of the Labour Party for its inability to understand the questions the City has to face, I am afraid I thoroughly enjoyed it. I add that I like him much; and I greatly enjoy his unique power of convincing himself as he goes along by the sheer force of his own eloquence. I was amused too by his obvious contempt for most of his colleagues except Birkenhead; and his pity for Lloyd George as a fellow adventurer whose boat has missed the tide. He interested me much by the remark that to him as a young man Joe Chamberlain seemed like an English Robespierre in the making; and Haldane, who was there, added that Edward VII was always a little afraid of Joe because of his radical activities in the 'eighties. It was amusing to see at that table how much still the English aristocracy is a close corporation. All of them were in some degree related to each other (except Haldane) and they were discussing the engagement of the Duke of Argyll's heir to the daughter of Beaverbrook, the great newspaper owner, as a most distressing thing. They make their small talk charming and very graceful; but their ignorance is really colossal. Churchill had never heard

¹ 3 *Encyclopedia Britannica* (14th ed., 1929) 824.

of Port-Royal; the lady next to me thought that the Richelieu of Louis XV's reign² was the great Cardinal and was shocked by his *amours* of which she had just read, as she thought, in reading about his great-nephew; and another person there when Churchill spoke of a visit he had received from a descendant of Madame de Staël looked so blank that I had to explain in an undertone. But they know all the current books, or pictures or plays, about which there is gossip. They have an absolutely immovable opinion of all the politicians and the novelists and the painters. They are charming people who do not know that other worlds exist, or that any can compete with their own. One said of Esmé Howard, the Ambassador, that it was a shame to send a decent fellow like that to Washington. Another asked me if there were any decent histories of the United States; and a third opined that "those Yankee fellows want taking down a peg or two, you know." One lady said to me that she was so surprised by Ramsay MacDonald's charming manners, "and his father, you know, was only a workman." I felt that the times of Charles Greville were really less distant than one was sometimes tempted to think.

You, I gather, float from case to case; though I hope you are at the moment in the leisure of an adjournment. When real leisure comes, do read Sam Morison's *History of the United States* which is really an admirable performance. And I commend an American novel which I thought really good — *Growth*, by Booth Tarkington, an unknown name to me. I have been reading, too, a very good translation from the Italian — Ruggiero's *History of European Liberalism* which, particularly in its account of Italy and her writers opened new vistas, though when I came across the noun *Jusnaturalism* I confess I was almost tempted to put the book aside.

I do hope Mrs. Holmes has recovered from the fall. What you say of Brandeis warms my heart; I know he on his side reciprocates it fully to you. When he writes to me he never fails to make you the centre of what he has to say — always with a pride and affection that are wholly delightful.

My love to you both.

Ever affectionately yours, H. J. L.

Devon Lodge, 20.XI.27

My dear Justice: Let me begin with the bad news. The publisher of my *Communism* has gone bankrupt; with the result that instead of the four hundred pounds he owes me (it has sold some forty thousand copies) I shall have, I understand, about ten pounds. As I had counted on that

² The Duc de Richelieu (1696–1788), Marshal of France, was the grand-nephew of Cardinal Richelieu.

for my American holiday at Easter, it means, I fear, that I must postpone it until the French book is done. It is, I think, bad luck, to have written a "best seller" and then to be deprived of the fruits thereof; but I see no other way of meeting it except to shrug one's shoulders and go on to the next thing.

I was distressed at your news of Wu's silence; for I have heard nothing of him for fifteen months; and in that seething cauldron anything may happen. Your tale of the Yale lawyer with the declamatory dedication is superb. I once thought of a little anthology of dedications, for especially in the 17th and 18th century some are magnificent. I have a book by Dr. Nathaniel Johnston *The Excellency of Monarchical Government* (1686) inscribed to "My Lord Widdington and others of the learned and noble gentry beneath whose feet I am but a worm to be crushed" which gave me pleasure; and in our own day the dedications (worth a visit to the Library of Congress) of Roland G. Usher's¹ books are eminently in the grand tradition. I was glad to note that Felix had dedicated his book on your court with charm;² though I thought (not that I should say so to him) that he had broken a butterfly on a wheel in devoting 400 pages to an analysis of what really was worth an article.

I have had a busy time since I wrote last. A jolly dinner with H. G. Wells who gave forth judgments with vigour. Item, J. M. Barrie had never written a line worth a damn (warm consent); item, Henry James spent his life pursuing a vain shadow; item, Santayana had sacrificed essence to form; item, Herman Melville was easily the biggest of all the Americans as Dostoevski of the Russians. He was off to France for the winter and full of reckless gaiety so that the evening was a delight. I don't know a more stimulating fellow in England. Then dinner with Haldane at which Baldwin was the other — an amazing evening, with Haldane trying to make out (Great God!) that Gladstone was the most important Englishman of the 19th century. Baldwin and I argued in politics for Disraeli; in speculation for Darwin. But old Haldane was hearing the magic voice and the heaven-sent gesture and was immovable. Baldwin contributed the amusing fact that when a judgeship is vacant an average of 100 K.C.'s write in to explain their charms but when a Regius professorship is vacant he has to go out searching for news of the man. Modesty of the scholar, said I; no, said he, for most of those to whom it is offered think themselves too big for it. . . .

¹ Roland G. Usher (1880—), Professor of History at Washington University, St. Louis, best known for his *The Reconstruction of the English Church* (2 vols., 1910) and *The Rise and Fall of the High Commission* (1913).

² Frankfurter and Landis, *The Business of the Supreme Court* (1927) was dedicated "To Mr. Justice Holmes, who, after twenty-five terms, continues to contribute his genius to the work of a great court."

De aliis, not very much is to be told. In reading I have read one charmer, Haussonville's *Salon de Madame Necker*, which has letters of Gibbon in the calf-love stage beyond all price; Feuchtwanger's *Ugly Duchess*, in many ways a remarkable picture of the Germany of circa 1350; and Villey's *Sources de Montaigne* which is an amazing piece of scholarship. But, for the most part, I have been finishing an article on Bolshevism for the *Encyclopedia Britannica* and ploughing through dreary wastes of Bolshevik literature. No one, I fear can call it in the least exhilarating except the elect, and I, alas, am not of them. Did I tell you that I had traced the origins of the famous "Dictatorship of the Proletariat" to Babeuf? As that is Marx's chief claim to strategic creativeness, and as I dislike Marx intensely it gave me peculiar pleasure, as there is little doubt but that he had read Babeuf with great care.

I have bought one or two nice things. From the library of Bury the historian I got the Abbé Saint-Pierre's works — a great rarity, and especially interesting in bulk like that because the resemblance to Bentham is then so very striking. And from France one or two nice eighteenth century things, especially a defence of toleration by Holbach which is quite remarkable. Given a month's wanderings in France with a free hand and I think I could make this library of mine a useful tool in the period 1610–1789. Anyhow you shall see when you come to read volume one of the *magnum opus*. But I want Goldast's *Monarchia* most badly, and it still, with striking persistency, refuses even to come into the auction rooms.

My love warmly to you both. I hope Mrs. Holmes has fully recovered from her fall.

Ever affectionately yours, H. J. L.

Washington, D. C., November 23, 1927

My dear Laski: Your old friend John W. Zane has written a book — *The Story of the Law* — and James M. Beck writes a letter of introduction. Beck, you may remember, is an ex-solicitor-general and thinks that only strokes of ill luck prevented his being Ambassador and on our Court. Zane has an irritating ability, at once undeniable and unsatisfactory. Evidently he has read a good deal, but he seems a *parvenu* in the world of intellect, from his arrogant dogmatism and, unless I am wrong, his somewhat painstaking introduction of quotations or allusions that he thinks you will not expect. The book is intended for popular reading and does not contain new ideas but it tells the story in an interesting way and with a sense of actuality. He begins with man in a pack and works down. Of course, there is more of the "would" in proportion to the "did" than we are accustomed to in these days. You remember how reconstructors of

the past a century ago were accustomed to say that in the hunting stages men would do this and that &c. &c. Wells has begotten a progeny. We had the story of philosophy last summer and here the story of the law and there are others. Wells I think produced a work of art. Whatever his faults of detail he makes you realize the world and the story of man as one — and realize something of what it was. This book so far as I have read has a similar merit in a less degree and is well qualified to make semi-civilized men out of the quarter civilized. But the conceit of the writer is amazing and I am sure that divine providence arranged that Beck should introduce him.

Nothing else to tell. We are sitting again. All my cases and a dissent are fired off and I begin fresh and empty. I have had nothing as yet that excited my enthusiasm — but there is a dim spark of interest in the meanest case. I had a letter from A. Hill saying that Frankfurter will write nothing more about Sacco and Vanzetti for a year. I hope it will be longer than that, as I think all those who were interested on that side seem to have got hysterical and to have lost their sense of proportion — but I don't refer to his book in saying that. He has published also a good one on *The Business of the Supreme Court*. He is so good in his chosen business that I think he helps the world more in that way than he does by becoming a knight errant or a martyr — though I don't undervalue or fail to revere his self sacrifice in his excursions and alarms. I might say something similar of another friend of mine.

Affectionately yours, O. W. Holmes

Washington, D. C., November 29, 1927

My dear Laski: Just as your letter came I received a parcel from the *China Law Review* with a judgment by Wu, of late date — and I suspect the address to be in his handwriting but he used to be an eager correspondent and he has been silent for more than a year, so that I don't quite know what to make of it as no written word explains. You speak of him in your letter which makes me mention him first. After finishing Zane's book of which I wrote to you I had a few hours which I filled delightfully with your *Miscellany of Tracts and Pamphlets* — very good reading — and if one used those methods, worth resorting to for new words or tricks of speech. My judgment of Zane was not changed as I read on. There were some things that seemed to me disproportionate toward the end — and renewed surprise at the boorish dogmatism of one who pauses in a history to reflect on the advantage of being born a gentleman. But the story interests and is made pretty real and actual, a grandchild of Wells's book.

I am truly sorry about the publisher of your *Communism* — in every aspect. As to Frankfurter's dedication, do you know that I didn't discover it till 3 days ago? A letter from A. Hill said something about the dedication which I did not understand — I looked at the book and had to cut that page, when lo! I was quite overcome. It touched and pleased me much.

Isn't it queer — what you tell me about the K.C.'s writing when a judgeship is vacant! I remember one or two cases of men who wrote on to Eliot — and then to Oxford — stating their claims to honorary degrees — I am happy to say in vain. As to your other themes, I remember years ago being moved by Barrie's *Window in Thrums* — and I have seen some of his short plays with sentimental emotion. I am inclined to agree about Herman Melville with considerable qualifications — and as to Gladstone. Little as I admire him in the higher intellectual spheres, I should have thought him more important than Disraeli. I am glad you can bore a gimlet hole in Marx, as I think him a humbug (I mean in his reasoning), and he almost beats Zane for patronizing side. . . .

Our cases haven't been specially interesting but we have one on where a man is going to try to make out that for a city to go into the gasoline business is *contra* the XIV Amendment. Also I hear that they have proposed a nationwide referendum on the drink question. I am amused at the recurring question as to Coolidge's meaning in saying that he didn't "choose" to stand for a third term.¹ I regard the expression as perfectly good English and presumably saying just what he meant. But those who justify it generally go no farther than to speak of it as a local usage. I must get 15 minutes reading — and I have barely time for it so I shut up. I think of things I want to say to you and forget them before the time comes to write.

Affectionately yours, O. W. Holmes

Devon Lodge, 3.XII.27

My dear Justice: If my memory serves me right, next Thursday is the 25th anniversary of your entrance into the Court. I need not tell you how warm my congratulations are, nor how affectionate. It has been a great thing for America in particular to have you there, and, in a larger sense, for the common law jurisdictions of the world. *Macte antiquae virtutis!*

I have had grimly busy days. A case at the Industrial Court, in which the briefs alone were a thousand pages, has occupied four long days; and we have still to finish conferences about it. And I have had three lectures to give of the irritating kind that one promises months ahead and forgets

¹ On August 2, 1927, President Coolidge had released his famous brevity: "I do not choose to run for President in nineteen twenty-eight."

about until the night is on you. But much has been flavoured by a grand dinner at Sankey's to meet a number of deans and bishops. I have never before met the breed in bulk and a queer lot they are. First — their ignorance of their own ecclesiastical history is appalling; I talked of the Donatists and not one of them knew what Donatism was. Secondly they were all incapable of intellectual honesty. For example I asked them if they thought anthropological discovery affected the place of the sacraments in theology, and they all said of course as regards Roman doctrines, but not on the Anglican side. Then we talked much of the next Archbishop and for them the essential quality they desired was *tact*; and tact meant what American politicians call "availability" — X would not do because he was labour; Y was too high; Z too low. A was ideal — very colourless but he had never spoken on dogmas and being 68 would not reign long enough to disappoint the younger men on the episcopal bench. I would not have missed the occasion for worlds; I left feeling like Voltaire. And as I left Sankey gave me a beautiful folio translation of Machiavelli (1675) which provoked a vast and bucolic dean to regret that it was a translation. He personally always read him in the original *Latin*. O God! O Montreal! Also let me chronicle an amusing dinner at which I sat next to a great lady whom I will not name. She had just come back from America. How distressing it was! So uncouth, so uncultured; rather like England before there were railways. The Americans were so conceited. They lacked an aristocracy to give them the grace of cultivated tradition. Thence to books. Did I know the works of Julia Freer¹ (do you?)? There was a great historian, learned and yet naughty! So many love stories. She adored love! There was no love in America; it was all money. England was losing ground because the working-classes wanted money just like the Americans instead of loving their betters as they did when the queen was alive. The Prime Minister ought always to be a peer — it gave confidence to know that one of the right kind was in office. In the old days peers were always Prime Ministers. I breathed the names of Pitt and Peel and Gladstone which she swept aside with the sublime ejaculation "*canaille*." I of course encouraged her by unconcealed admiration. She confided to me that her ambition had been a salon but the arts, alas, were dead. For instance only last month she had invited Kreisler to dinner and asked him to "bring his fiddle" to play afterwards and he refused. "These artists get so much money nowadays that they are getting above themselves." And the girls of today! Words failed her beyond the remark that of the daughters of her twenty closest friends not one was a virgin. I, of course, must know that. I disclaimed all knowledge as tactfully as I could. "Ah! but you are a man, and no man thinks of a

¹ Not identified.

woman except as an object of seduction." This from a hag of sixty with four chins and the dress of a girl of nineteen, the professional and permanent *ingénue*. I could have listened to her effortlessly all day; and she was so convinced that she was profound and important.

In the way of reading I have had little time for other than work — mainly St. Augustine. I wasn't very profoundly impressed, except by a certain unmistakable dexterity and fullness of mind — chiefly out of Plato and Cicero. He seemed to me to run away from all his real problems, and to lack altogether the ability to judge oneself that makes Spinoza so formidable an analyst. Curiously, I was less moved by the *magna opera* than by the letters some of which, e.g. No. 185, struck me as the work of a first-class administrator; and in general I offer the bet that there is no originality left in Bossuet after you have made your way through Augustine. He did have the effect on me of wanting to know more of Roman Africa which I have marked down as an enviable subject for leisure. The Zane you mention I do not know even by name, but I should like its exact title if you have it at hand. I cannot, I fear, quite bear the thought that there is the hand of J. M. Beck upon it for the latter always seemed to me an intolerable pompous ass — I remember his remarking at a Gray's Inn dinner that "Pollock had quite a standing among American lawyers" which is like an undergraduate explaining that his fellow thought well of Bentley.² I think I wrote to you that Felix's book seemed to me over-elaborate for its theme. The essential stuff could have been put in 100 pp and the mass of notes were I thought not worth the labour; but, of course, I speak here as an ignoramus on the subject. Another book I have been reading with much pleasure is J. M. Robertson's *Short History of Freethought* in which I have just got to the middle ages — really learned and revealing. It confirms me in my old belief that religion ought to make God abdicate if he knows anything of its habits.

Our love to you both.

Ever affectionately yours, H. J. L.

Washington, D. C., December 15, 1927

My dear Laski: My thanks for your references to my 25th anniversary. I think that I should have forgotten it had not Brandeis and a few others sent me kind remembrances and a little later Frankfurter's articles in the *Harvard Law Review*¹ reinforced his dedication — which I did not dis-

² Richard Bentley (1662–1742), Master of Trinity College, Cambridge, whose monumental classical learning has seldom been excelled.

¹ "Mr. Justice Holmes and the Constitution," 41 *Harv. L. Rev.* 121 (December 1927).

cover until a letter from A. Hill referred to it. You are better than usual, if possible, with your account of the Dean who reads Machiavelli in the original Latin, and the great lady with her penetrating criticisms of America and her revelations about her friends (and of herself). I haven't had time for reading yet, but I have got off my only opinion, a bothering one, and received it back approved from the Chief, Brandeis *et al.*² and have done my *certioraris*, so that now all that I have on my conscience for the next two weeks, is to try to make up my mind whether some gas rates are confiscatory³ (Harlan used to call it confiscatory) and the dentist. At odd minutes I have read your little book of *Tracts and Pamphlets*. Among the later ones I was rather touched by Wesley and stirred by Tom Paine. I should have been slightly nauseated by Newman had he not been too remote for anything but curiosity. I haven't quite finished Kingsley, the only one not read. He makes me squirm, even while I dislike him as a wholesome parson imbued with convictions that I do not share. Zane's book is *The Story of Law*. John M. Zane, Ives Washburn, publisher, New York. You did know of him and were savage — I forget exactly the occasion. You will be pleased to know that he said in an article that anyone who thought my *Kawananakoa v. Polyblank* decision right might give up all hope of being a lawyer. In this book he dismisses Plato as incredibly conceited, as formerly he dismissed all German law speculation (but that was during the war) and spit on his hand and wiped all the sequence from Hobbes to Austin off the slate. He never has told, so far as I know, what the great philosophy is that takes the place of all these — but I guess he thinks there ain't no such critter but just the sensible practising lawyer to be found in John M. Zane. He affects the tone of scholarship yet somehow seems to me a *parvenu* in the business. But I think he has told the story very well for its purpose. Perhaps you will regard it as an index that he seems to consider Vinogradoff as the great jurist of the century. Vinogradoff was learned, but so far as I have come in contact with his thought on legal themes it has not struck me as important. Do you agree? I am not malevolent in my attitude to Zane, but it tickled all that is evil in me to have him introduced and recommended by Beck. (There are many who suppose that Beck is a great constitutional lawyer.) I never read anything of St. Augustine except the *Confessions*, which interested me, though I couldn't recite very well on them now. You don't surprise me as to Bossuet, nor very much about Augustine, but on the latter I don't know enough to speak. I see no one except the JJ., and the rare caller who gets in, like your Ambassador and his wife, both of

² Probably *Equitable Trust Co. v. First National Bank*, 275 U.S. 347 (Jan. 3, 1928).

³ The case has not been identified.

whom I like sincerely. I haven't yet got free from the cramp of continued application that I have felt ever since I have been here. I suppose I may live to expatiate free again.

My love to you all and a merry Xmas.

Yours as ever, O. W. H.

Devon Lodge, 12.XII.27

My dear Justice: I imagine that this letter ought to arrive about Xmas. You know how warm are our good wishes to you both.

I was relieved to hear that you had received signs of life from Wu. I enquired at the Foreign Office here about him and they have sent out an enquiry. Could you let me have his exact address? They say that with it they can obtain exact information adding that it will take some time.

I was amused by your further account of Zane. It reminds me a good deal of a colleague of mine at McGill University who used to commence his courses on English Literature by explaining that attendance thereat did not constitute a personal introduction to him as a man of his birth and breeding could not possibly know students outside the lecture room. Only last night I was told of a young man who applied for the post of secretary to Curzon. The latter asked if he was married. "Yes" said the applicant. Curzon hoped his wife was a lady; if so when they were in want of an extra woman for dinner she might be put on the list of availables. The candidate thereupon abruptly explained that he was no longer a candidate. "Dear me," said Curzon, "do you think it fair to deprive your wife of the social opportunities she could have by dining with us?" Could the sublimity of insolence really go farther than that?

The days since I wrote last have been very full of that disease of committees which accumulate about the end of term. And students have poured in relentlessly — including an American who only wanted me to ask Lloyd-George for him who had bought peerages while he was in office; and a German who presented me with an article upon the social theories of Graham Wallas in which in twenty odd pages (odd in a double sense) he compared him to thirty-one different German sociologists. Nor must I omit the Chinese student who wanted us to let him do a LL.D. and on investigation turned out to be the son of one of the most eminent pirates now operating in Chinese waters. You must admit that an academic life offers the prospect of very varied experience.

The most pleasant person I have encountered at all intimately these last weeks is our new professor of economics, Allyn Young, who comes to us from Harvard. I don't know if you ever encountered him in his Washington days. I find him learned, simple, and well-balanced. He agrees with my main feelings about education, especially in the view

that half the people now doing research, especially on the co-operative plan are quite unfit for it. His affection for Felix and F. J. Turner is of the right intensity; and he entirely dislikes the Harvard Business School. These are the beginnings of wisdom. I had him in to dinner the other night with Bonar the economist, and it was a delight to hear a series of conflicts about purely scholarly matters *e.g.* where the physiocrats got their ideas of natural law from, what is the most unintelligible sentence in Hegel (a good subject for an anthology) and the real nature of Mrs. J. S. Mill. I also had an adorable lunch with Birrell who told me he had been reading the early Fathers of the Church and had been completely converted to Manichaeism by the official proofs of its heterodoxy. He said he had been going through his fee-book and found that after he took silk all his biggest fees came from cases he had lost. We discussed the present bench and he took the interesting view that, on an average, the political appointments were vastly inferior to the non-political. I told him of Felix's arguments about the value of a grasp of affairs through political experience in his book and Birrell denied this with vigour. He insisted that the lawyer appointed direct from politics always showed hostility to experiments in the direction which ran counter to his own political views — that the word "reasonable" was something he could not interpret "reasonably." Which, as he confirmed my private prejudices, pleased me much. With great deference, I submit that you, Learned Hand and Cardozo would not have been better judges by coming to the Bench from a political career; and it is surely significant that Bowen, Blackburn and Mac-Naghten were all non-political while Jessel was a dead failure in the House of Commons.

In the way of reading there is, I fear, but little to record, for I cannot, I fear, hope to persuade you to follow my footsteps through the dreary track of S. Augustine. More pleasant was a good detective story by one Crofts called *Inspector French and the Starvel Tragedy* and a charming fantasy by an American writer named Thornton Wilder called *The Bridge of San Luis Rey*. Otherwise I have not found time for experiment on any scale and Augustine produced in me a sense of irritation. Theology certainly needs faith as a compensation for its incredible prolixity and any bigger draught of it would make me a militant atheist anxious to do battle with the credulous.

I had an amusing book-adventure. I found a nice copy of a 16th century Aristotle — the *Politics* — with a coat of arms on the binding. I paid ten shillings for it and then went on to a shop where the bookseller prayed me to re-sell it to him. I changed it there for a nice Locke in four quarto volumes. When these came home Alexander, the philosopher, was having tea here. I opened the Locke and he immediately sighed with envy and

offered to exchange something for them. I acquiesced and am now the possessor of John Adams's *Works* in ten volumes. Frida is urgent that the process of exchange should stop there lest I end up with the Law Reports and drive her to found a new house.

I go North on Thursday for a week to give two lectures at Manchester University. Then home for Xmas and then a few days on the Continent before term begins. I think Antwerp, and if the money holds out, on to Amsterdam.

Our warm love to you both.

Ever affectionately yours, H. J. L.

Washington, D. C., December 24, 1927

My dear Laski: Your account of Curzon and the man who applied for the post of Secretary is striking and British. There was a simplicity and single-heartedness in Curzon's insolence that almost made it cease to be such — an English quality that to such a double-dyed sceptic as me is impressive. To be cock-sure is to have power. It comes in curious contrast to what I was saying yesterday to Brandeis. When we were boys we used to run tiddledies on the frog pond in the Common — that is jump from piece to piece of the ice, each being enough to jump from but sinking under you if you stopped. I said having ideas was like running tiddledies — if you stopped too long on one it sank with you. The thought was suggested to me by reading a collection of essays on *The Social Sciences and Their Inter-relations* edited by Ogburn and Goldenweiser — Houghton Mifflin & Co. The writers seem to take it for granted, as indeed do the scientific men whom I see, that the Spencerian straight line evolution is a dream — that there is no sufficient evidence that the matriarchate preceded the patriarchate (as a general fact) that the original promiscuity is an invention of the anthropologists &c, &c, &c. I think I will cease struggling and be an old fogey — for how the devil one can write decisions and do what the newspaper men call keeping abreast with the times I do not see. Before I forget it: Wu's name is John C. H. Wu — and his headquarters or address used to be 11^a Quinsan Road, Shanghai — and a paper that I received lately containing a decision of his I think came from the same address. He was a member of the Shanghai Provisional Court. But if he is there and all right and if he sent me the decision I can't imagine why he has not written to me for so long. 11^a Quinsan Road seems to have been the headquarters also of The Comparative Law School of China — Law Department of Soochow University — described on the title page of the *China Law Review* — Volume 1, 1922-24 as the publishers of the periodicals — with that address.

It is Christmas Eve and I am so interrupted and upset that I will not try to continue — except to send you every good wish. I have had two

presents from disconnected men of a bottle of whiskey — which raises a misgiving in the mind of a careful observer of the Volstead Act but recalls the prayer Lead us into temptation.

Affectionately yours, O. W. Holmes

Devon Lodge, 28.XII.27

My dear Justice: I have lived in a whirl of business since I wrote last. First two heavy cases at the Industrial Court which caused me pain and woe in the mere discovery of the facts, but in which I hope we have done substantial justice. Then a visit to Nottingham to speak at the University there; then to Manchester where I lectured twice and spent a week-end with my people. One lecture amused me a good deal. I spoke on the prospects of parliamentary government and one young man — I should guess a briefless barrister, at least I hope briefless — deplored my failure to preach a return to the great ideals of Athens where the citizens gathered in the market place and spoke their mind to Pericles. So I pointed out, as nicely as I could, that if an English citizen wandered into Downing Street and spoke his mind to Mr. Baldwin he would certainly be fined a guinea for disorderly conduct and probably remanded for examination by a mental specialist. When I got back there was the necessary excitement of Xmas and now we are busy packing for a week in Antwerp during which I hope though a little vaguely to have a look at the book-shops of Amsterdam.

I thought Felix's piece in the December number of the *Law Review*¹ quite excellent in tone and temper, though he did not say one of the things I should have said, namely that comparing what you write with the judgments of Marshall you give a useful sense of a complex world into which with great effort a few sign-posts may be driven while Marshall always seems to suggest that the world is a damned simple place and he especially knows all about it. Somewhere lingering in me is a suspicion (dare I utter it) that Marshall is rather an overrated person and that he would have been much happier with sturdy Philistines like Field and Brewer and Peckham than with civilised creatures like you and Brandeis. I add that I was amazed by the article by Pound which followed on Felix's;² at first it didn't seem to me to mean anything and a second reading convinces me that if it does, what it has to say isn't particularly worth while. If ever a man lived beneath the tyranny of categories it is Pound, and the habit of thinking them realities seems to grow on him. A page of Morris Cohen is worth a whole article by him.

¹ *Supra*, p. 1003.

² "The Progress of the Law: Analytical Jurisprudence, 1914-27" (Part I), 41 *Harv. L. Rev.* 174 (December 1927).

In the way of reading I have not been able to do much. I read the autobiography of Haydon the painter³ which the publisher sent me and thought it a painful and morbid document. Then a really excellent book by one Allan Nevins (whom otherwise I do not know) on the American States from 1783–9, full of curious and quite fascinating detail — a worthy book for an idle afternoon. And a long train journey made me pick out Maitland's *Leslie Stephen* which is, I swear, the second biography in English, Leslie's *Life of Fitzjames* being indubitably the best. I was grateful for details of Zane for whom I have sent. Evidently he does not know Birrell's definition of a gentleman — a man who makes his opponent in controversy say "I wish I had said that first." But from your remarks I infer there is the prospect of instruction.

I had one book adventure in Nottingham that will please you. You perhaps know Forsyth's *Cases and Opinions in Constitutional Law* — a really rare book which sells for eight or nine pounds. I bought it in the market-place at Nottingham for 7/6. When I got to Manchester my brother's eyes fell covetously on the Forsyth and he spoke strongly about the imminence of his birthday. I, therefore, with unshed tears, presented it to him. The next day, in Manchester, I saw a copy for 5/ — and, of course, gladly bought that. Going to the University to lecture I met Powicke the historian⁴ on the bus, I having the book in my hand — he cried out that he had looked for Forsyth for twelve years without ever seeing a copy outside a public library. I, moved by his obvious, though discreet, envy, and liking Powicke in every way, thereupon insisted that he take my copy and thereby, let me in honesty add, recognised that I sealed him to myself forever. So I returned to London feeling that one could possibly, at least in the realm of books, push the Sermon on the Mount too far. Lol cometh Xmas day and my assistants send me, with their warm regard, a copy of Forsyth with the name of Lord Bowen upon the fly-leaf. My dear Justice, cast thy bread upon the waters if thou startest with assistant⁵ like mine.

I was much distressed by a note in Felix's paper which indicated the death of young Henderson.⁵ I did not know him well, but all I knew sug-

³ Probably *The Autobiography and Memoirs of Benjamin Robert Haydon, 1786–1846* (Penrose, ed., 1927).

⁴ (Sir) Maurice Powicke (1879–); Professor of Medieval History, University of Manchester, 1919–1928; Regius Professor of Modern History, Oxford, 1928–1947.

⁵ In 41 *Harv. L. Rev.* 126, note 15, Professor Frankfurter had referred to the untimely death of Gerard Carl Henderson (1891–1927). Henderson, while a law student, wrote *The Position of Foreign Corporations in American Constitutional Law* (1918) and later published *The Federal Trade Commission* (1924). His widow was the daughter of Professor F. W. Taussig, the Harvard economist.

gested a mind of real penetration and candour. It must be a heavy blow for Taussig.

Of other things there is little to tell, though I wish I could transcribe a talk in Manchester with a youth of eighteen convinced that he was born to write and urgent that I should tell his father (a wealthy cotton-broker) that a couple of thousand a year was the debt parental toil owed to filial genius. My refusal (I abridge an epic) ended with his hint that middle-aged failures never lend a helping hand to the new generation. He knew all the *clichés* of Ibsen by heart.

May 1928 bring you both all that I am eager it should!

Ever affectionately yours, H. J. L.

VI

1928-1929

My dear Justice: We got back yesterday from a divine week in Antwerp. Talk of the best kind; food that even I appreciated as different; two perfect etchings; and a host of old books the mere finding of which was ecstasy. The man I enjoyed most there was an old Belgian Jesuit who had been for nearly forty years a missionary in China. Religion had ceased to have much meaning for him and he had, I think consciously, devoted himself to Chinese anthropology. He was a brilliant fellow, with that suave sensibility which makes the Jesuits so much the ablest and most attractive of all the Catholics. I asked him how he had managed to stay so long without being moved; he said that he always arranged his diseases at a suitable moment. I asked, too, much about his religious work. He said that he went over convinced that he had a great mission and stayed convinced that he was being humanised. Did he ever have religious doubts? Yes, but when they came anthropology was an antitoxin. Had he ever seen evidence that the Chinese were influenced by his teaching. Answer: a good Chinaman will not be harmed by Christianity, and a bad Chinaman is less likely to starve if he becomes a Christian. After all, he thought, it was good for China to know that Confucius and Lao-Tse had their European *confrère*. He objected to no form of religion except Baptists; the latter he disliked because they really thought their dogmas were important. The only Christian dogma to which he clung was the necessity of beautiful music in the church positively; and, negatively, the aesthetic horror of extempore prayer. Another attractive person was an antiquarian, who kept one of the finest engraving-shops I have ever seen; you would have revelled in his Rembrandts and Whistlers and Rops. He told me that he started as a boy in the shop he now owns. Thirty years ago the proprietor was going to sell it; but Leys, the Flemish painter, could not bear the notion that the place where he had coffee every Friday at eleven might possibly cease to exist and persuaded a Belgian millionaire to lend my friend the capital for its acquisition. Now it has become a kind of centre for the artists of Antwerp and from dawn till dawn you can hear why Rodin was *bourgeois*, why Cézanne is the greatest of all artists, why Maeterlinck is tenth-rate, that *étatisme* is a crime against humanity, that *il faut souffrir pour être décoré*, and so on; all the most obvious back-chat of an artistic milieu, and yet all fresh and living because so deeply felt. The book-hunting was adorable, even though I did not, as I hoped, get to Amsterdam. For the first two days I drew a blank, there being nothing but old Flemish books; but I later found a man with a heap of things in a stable and therefrom recovered a volume of contemporary criticisms of Montesquieu, one of them intensely interesting since it attacked his indulgence for the government of England and argued that on his own principles English success in the art of government had no relevance to the conditions of France. I found a charming volume of Abbadie, *Les vies*

des hommes de lettres illustres with a most attractive account of Descartes therein and a book by one Gin, of which I fear you may not have heard, but which is important for me as it shows the influence of Bodin in directions usually unrelated to his ideas.¹ I bought also a new book by Thibaudet, the French critic, called *La république des professeurs*, a kind of history of French thought since 1900 which is as brilliant and as brilliantly written a book as I have read in many a day. Altogether a most satisfactory visit. And I spent a day in the *Musée Plantin* and sat in the chair where Lipsius corrected the proofs of his texts with the fear of Scaliger's criticisms in his mind, not without emotion. The house we stayed in (an architect-friend's) was itself a poem. Built in 1405, most of the original remains, especially its exquisite interior court, and its perfect Gothic façade. Really it is a crime that you and I cannot have a month in Europe together so that I could show you my Paris and my Antwerp and my patch of Prague that I would not change for the wealth of the Indies.

Thanks for the address of Wu. I have written to Austen Chamberlain and asked him to make suitable inquiries discreetly and you shall hear at once. The court I believe still functions which, at least, means one has ground for hope. But in China just now one ceases to expect anything but the worst.

I came back to a flooded London and a dinner party at Bernard Shaw's where the guest was Chesterton. They both, I thought, talked clever nonsense interminably under the impression that it was metaphysics, and Chesterton acted as though the creation of a paradox is proof of genius. Shaw (to speak in your private ear) rather bored me. He talks as though he knows that Europe is listening at the keyhole to what he says; and he has, consequently, a reckless disregard for truth where this is in conflict with sensation that I really find a painful thing. And the adulation which surrounds him is irritating beyond words. He says something which makes you revolt; you contradict; and his audience looks at you as though you had spat upon the Eucharist. When *e.g.* he and Chesterton maintain that there has been no intellectual freedom in Europe since the middle ages what can you do except be vehement. Yet with his audience that kind of cheap paradox is greeted as an *ex cathedra* pronouncement from Rome. I am permanently anti-papal.

Our love warmly to you both. Please take great care in the cold weather that I read of in Washington.

Ever affectionately yours, H. J. L.

¹ Probably Pierre Gin, *Les vrais principes du gouvernement français* (1777), an attempted refutation of Montesquieu and Mably.

Washington, D. C., January 11, 1928

My dear Laski: A double extra delightful letter from you this morning — with the wonder tale of Forsyth — a work of which I remember the outside better than the inside — and your astute remarks on Marshall. You may recall on reflection that in *our Collected Legal Papers* we had a few remarks on that sage — which led Roosevelt to doubt whether I was the right man to appoint to this bench. I only think you should not make it a trait of Marshall especially — it was the mark of the time, a god-fearing, simple time that knew nothing of your stinking twisters but had plain views of life. Story and Kent seem to me similar in that way — and I never have noticed any marked or extraordinary self-satisfaction to Marshall. They were an innocent lot and didn't need caviare for luncheon. I am all in the law again and reading next to nothing. I do constantly miss my friend Rice who was boss of the print department. That department offers a rather finite sphere of interest but there always was a little mystery of possible enchantment when I went over for a morning with him — and perhaps still more when I thought of going over without going. I haven't bought a print since he died — bar a Japanese trifle or two which I don't count.

Last night I set my wife to reading to us a Japanese woman's account of her bringing up and life that interests me much. (*A Daughter of the Samurai* — by Etsu Inagaki Sugimoto. Doubleday Page & Co.) Her account of one of the old Samurai after the new order had come in was like the most moving tales of the old French *noblesse*. She last sees him as doorkeeper in a shop, opening and shutting for those who in her youth would have touched the earth with their foreheads when he rode by — but with the same old dignity and little smile. My first Japanese student was like that. He was given 2 swords when he was 12 and told he could draw one when he chose but that if he did he must kill either the other feller or himself before putting it back.

As you say that you expect instruction from Zane by reason of what I said, I protest — I hardly think much instruction, but, as I said before, a realizing sense of the movement of the law — in a less degree the kind of thing done by Wells — and oh my lights — oh my liver — introduced to the public by that other great man Beck! I am pleased to notice how frequently our estimates agree.

Last night in my hour off after dinner, being unwilling to take up anything that I must finish if I began it, and having nothing particular in mind, I browsed a bit in the *Dictionary of Modern English Usage*, which embodies all my convictions so far as I have seen, and once in a while has a wrinkle that had escaped me — e.g. the distinction between “especially” and “specially” — but I think my instinct would have kept me right. It

led to a misgiving for a moment after I had written especially on page 1 of this (last line) but I believe it is right.

You see how dry I am when I am in the Chamber of the Law, but I do wish you and yours all good things for the new year. It has begun pleasantly for me. Your address *Bridge Place* has given me a slight apprehension for you as to the floods but I hope an idle one.

Affectionately yours, O. W. H.

Devon Lodge, 21.1.28

My dear Justice: Your delightful letter of January 12 [*sic*] was very welcome; and I was glad that you did not feel unsympathetic to my heresies about Marshall. The floods here were pretty ghastly — in places like the desolation of a tidal wave. But the position of this house in a *cul de sac* renders it, luckily, remote from any prospect of inundation. Two maids in the house of a friend of ours — Haldane's niece — were actually drowned as they slept in bed.

I have had a very busy time since term began. First a good deal of writing to do, some of it, as a piece on Rousseau for the *Yale Review*,¹ really pleasant as making one think out a judgment in general terms; other parts, as book-reviews, irritating because you have never quite the space to say what you want. Then I have had some lectures to give beyond my ordinary work; and the melancholy business of committees. If academic people are Plato's philosopher-kings, I think I am in favour of government by the ignorant. Yesterday I was at a board for over an hour which devoted passionate energy to the question whether the title of a thesis should be "Lord Odo Russell's Embassy in Berlin" or "Anglo-German Relations while Lord O.R. was at the Embassy" I have rarely seen such heat; and my tentative suggestion that the matter was not really very important won only grim head-shakings and the expression of a fear that I was undermining the standards of the university. On the whole I am not very impressed by government by dons. They are remote from life; they have what the Freudians call an "inferiority complex" about business; and that makes them wrangle interminably about petty details without much regard to their importance.

You will have seen about Hardy's burial in the Abbey — to me a melancholy spectacle. First the old man deliberately did not want it; and second I object on principle to the Church getting *kudos* from men who reject its doctrines. I never thought that men like Shaw would take part in a ceremony which was built on dogma Hardy spent his life in denying; but I suppose even a neo-Jew like myself cannot quite grasp what

¹ "Portrait of Jean-Jacques Rousseau," 17 *Yale Review* (N.S.) 702 (July 1928).

burial in the Abbey means to Christians. His death made me reread some of his things. I marked him up for power and sense of the beauty in nature; but I thought some crude and most of the poetry in no sense poetry at all. But *Tess* and *Jude* and *The Mayor of Casterbridge* were assuredly in the great tradition.

In reading, I have had rather a jolly time. I read Paul Masson's *Religion de J. J. Rousseau*, certainly the best explanation of him that there is, and above all valuable because it makes so very plain the relationship of R. to the religious reaction of Chateaubriand and his period. Then Miss Haldane's *Life of Descartes*, good journeyman's work. It did not make me admire Descartes unduly as a person — that cold self-centredness is singularly unattractive, and the tone of his letters to Christina of Sweden makes one literally sick. Then I read the new volume of Queen Victoria's *Letters*, which I do urge you at least to turn over if they come your way. She was just like the popular conception of the Kaiser except that she was the formal head of a system able to neglect her opinions. Vicious, obstinate, ungenerous, the creature of flattery, and with no power at all of self-criticism. If Dilke and Chamberlain had known what she was saying of them at the time, Republicanism in the eighties would have been a serious business. And finally — curious juxtaposition — I have been reading St. Thomas Aquinas for my lectures and finding myself literally thrilled by the perverse ingenuity of his mind. I am quite sure that in an extra life I should devote my days to the study of medieval philosophy, and especially that exquisite problem of the Arabs as a medium between Greece and the medieval world. Aquinas getting William of Moerbeke sent to Greece to find more accurate mss of the *Politics* is a fascinating spectacle.²

I have bought, too, some pretty things. Two nice volumes of Holbach go far towards making my set of him complete; and I was tempted by, and feel for, the new national edition of Descartes in which I find the correspondence most attractive. Mersenne³ is an attractive person; and one feels that he had a good many qualities like to those of Felix. Then a glorious folio of Loyseau, and a not so handsome one of La Roche-Flavin's *Treize livres des parlements* which gives me the French juristic tradition from 1600 — D'Aguesseau, and interests me enormously because I think I can see in it one day the prospect of a comment on what Bodin was trying to do which might be provocative. I went, the other day, to Sotheby's to bid on a book; and there I saw some Rembrandts that were

² William of Moerbeke (ca. 1215–1286); classical scholar and orientalist and the first translator of Aristotle's *Politics*.

³ Marin Mersenne (1588–1648), theologian, mathematician, and philosopher whose warm friendship for Descartes was proved when he became his ardent defender in Paris when Descartes was in exile in Holland.

literally as fine as the day they were taken from the copper. But they brought prices which made me fade silently into the darkening shadows of Bond Street.

We have hardly been out in the last fortnight through pressure of work. But I have had a tea with Birrell and a dinner which it may amuse you to hear of. Birrell was very full of a book by Birkenhead called *Points of View*. "He thinks," said Birrell, "that if he spits in the street men will think it the waters of Heaven." He has satisfied himself that Demosthenes, Cicero, and Burke combined to give him birth; and having satisfied himself that this is so, he has compelled every half-wit in London to take him at his own valuation. I said to Birrell that he seemed to feel very strongly about Birkenhead. "Wouldn't you?" said Birrell. "I met him on the street just now and the fellow had the insolence to say that Lamb was not a loveable person." I wish I could reproduce the tone in which the words "the fellow" tumbled from Birrell's mouth. Another great remark of Birrell's was that the new school of poetry (the Sitwells *et al.*) seem to think that Apollo played not the lyre but a brass band. At dinner I sat next to a great lady whom I leave unnamed. She asked me if I were a Theosophist and I said I was afraid not. Then for 20 minutes she explained its glories to me and begged for my adhesion. She even offered to meet me *on the astral plane* but not on Tuesdays and Fridays when she had engagements. She told me that she vividly remembered living in 16th century Italy where she was Lucretia Borgia, and that in retrospect there was a cloying sweetness about her sins. Afterwards, her husband asked me if she had told me this; I had to admit it. "There have been moments," he said, "when I wished I was the Borgian Pope." But the husband told me the best thing I have heard in many a day. An Irish farmer and his wife go round the Dublin gallery. He calls out the number of the picture, and she announces its title from the catalogue. She reads slowly and gets a little mixed. They stand in front of a nude by Degas and he calls out "901" to which she replies "Queen Elizabeth preparing to receive the Spanish Ambassador." But I grow profane.

My love warmly to you both.

Ever affectionately yours, H. J. L.

Washington, D. C., January 23, 1928

My dear Laski: This begins a letter that I don't know when I can finish seeing that I have a five to four case just assigned to me in which I am the doubting fifth.¹ But I must say that you stir depths when you speak of showing me your Paris and your Antwerp. Also I am charmed by your old Belgian Jesuit and delighted at your experience with Shaw and Chester-

¹ The case has not been identified; perhaps it was *Casey v. United States*, 276 U.S. 413, *infra*, p. 1027.

ton. I have told you often that I didn't care what Shaw thought about anything — that I regard him as he once described himself as a mountebank — good to make you laugh but not to be taken too seriously. When Chesterton tackles fundamentals he seems to me incompetent. When he utters paradoxical epigrams he amuses me — but as to him also I don't care what he thinks.

'Tis done — my opinion has gone to the printer and I hope even that it may convince Brandeis who took the opposite view. Two generations ahead of me there was a well known lawyer in Boston, Charles G. Loring,² whom my mother-in-law pronounced a really good man because he never took a case that he didn't believe in — perhaps a more sardonic way of putting it would be that he believed in every case that he took. My senior partner³ was a student in his office and one day Loring working on a brief said "I pursue this investigation with increasing confidence" — a good touch of human nature which I now illustrate, having convinced myself quite comfortably. Dear me — how can man take himself so seriously — in view not only of the foregoing, but of the fact that a change in the wind or the electrical condition will change his whole attitude toward life. Of course he can't help being serious in living and functioning, but I mean in attributing cosmic importance to his thought and believing that he is in on the ground floor with God. This interjection comes up to me so often that I can't help repeating it often as I probably have uttered it before.

I was amused last night by a number of the *Mercure de France* sent to me by Gerrit Miller⁴ with an article intended to show that Casanova when he wrote his memoirs in his old life was an omnivorous reader, and as the reporters say in their rancid language — abreast of the times — that therefore various coincidences with a work by Diderot then attributed to the Chevalier de la Morlière, with Faublas and with Restif de la Bretonne, indicate that he had read the works referred to and heightened his memoirs with high lights from those sources.⁵ If you are a Casanovan this may interest you. C's book did me good at a critical moment — just when I had got out my *Common Law* and had some symptoms that for the moment I mistook for a funeral knell. It is an amazing work as no doubt you know. There is also a queer article on Goethe which I hardly glanced

² Charles Greeley Loring (1794–1867), enthusiastic conservative and leading member of the Boston bar whose energies were devoted almost exclusively to professional affairs.

³ George Otis Shattuck (1829–1897); Holmes twice paid public tribute to Shattuck's memory: 14 *Proceedings of the Massachusetts Historical Society* (2nd Series) 367 (November 1900); *Speeches*, 70.

⁴ *Supra*, p. 737.

⁵ Edouard Maynial, "Les mémoires de Casanova et les conteurs français du XVIII^e siècle," 201 *Mercure de France* 112 (January 1928).

at that interprets the seeming babble of the witch in *Faust* as a summary of mystic doctrine and I believe the key to the poem and to Goethe.⁶ Probably I have told you, for you know all that I know, of seeing on the fences just after our war an advertisement ST 1860 X and saying and proving to myself that if one accepted that as a revelation of the ultimate secret one would be surprised at the corroboration that a fortnight could develop — which may be taken as an appendix to the second page of this letter.

Also I have bought the new edition of the Greville *Memoirs* and perhaps may read them and give serious thought a rest. They profess to be unexpurgated although abridged, and to contain much that was left out in former days on account of the Queen. But all reading is still in anticipation until the opinion is sent out. It is curious how many cases open some, little it may be, vista of legal speculation, if the general interests you more than the particular. I remember that the first time I was in London Henry Adams remarked that interest in general propositions means the absence of particular knowledge — a good caution for the young but not true throughout life. I am not afraid to confess the foible. My secretary⁷ at this moment tells me of a little girl who told her mother that another little girl had white things in her head that bite — and her mother was alarmed, needlessly — she meant teeth. I had a drive in Rock Creek Park this morning, and walked down to the big open air bird cage. There is a new one now below it and two smaller ones — but *revocare gradus* [*sic*] and to walk back up the little hill I found a hardish job — age creeps on. It was delightful all the same. And so I wait for your next adventures.

Affectionately yours, O. W. H.

We have had almost no snow as yet — but February I always fear.

Devon Lodge, 28.I.28

My dear Justice: Today we got the distressing news that Felix's mother was dead, and I feel for him so deeply that I find this distance from him loathsome. Words of comfort on paper seem somehow to make one more conscious of isolation. I had a great affection for the old lady. She had such devotion to Felix — a sure way to my heart — such sterling commonsense and so vivid a personality. There stands out always in my mind a dinner with Gertrude King¹ when the latter was explaining her exploits in Russia. "And did you learn the language?", asked Felix. "Enough," said the great lady, "to get what I wanted in the shops."

⁶ Pierre Masclaux, "Le grand oeuvre de Goethe," *id.* 80.

⁷ Arthur E. Sutherland, Jr., *supra*, p. 975.

¹ *Supra*, pp. 503, 618, 621.

"Ah," remarked Mrs. Frankfurter, "when one has the money, one can buy in any language." Twelve years after that strikes a happy chord in my memory.

It has been a busy week. I have been arbitrating alone between the Borough of Aberdeen and its employes, and though the procedure was stately and dignified, it was hard work. And I had to deliver a founder's oration to a little secular society which descends straight from the Benthamites; and though I knew what I wanted to say, I had a fancy for that polish in saying it which means a retirement into the corner to consider one's adjectives. However in my reply to the debate I achieved what I thought a not unhappy remark. A clerical gentleman who had come to denounce did his duty vigorously, and represented with complete adequacy theological knowledge *circa* 1500. He spoke of my eulogy of the cleansing effects of Voltaire as "a shameful eulogy of a shameful career" and congratulated himself on the hope that God would deal with me. So I permitted myself to point out the danger of thinking that the deeper the woolliness of one's mind, the more one would be identified with the lamb of God, and left it at that.

I have been reading a good deal, though mostly in the line of work. One book — *Le rôle politique des protestants 1688-1715* — by Dedieu has been a revelation, for it shows that Bayle's very eminent adversary, the Calvinist minister Jurieu, was throughout the last twenty years of his life a spy in the pay of William III and Anne; which, naturally, makes one alter a good deal one's sense of his ideas and aims. I wish I knew whether Bayle had guessed this. It would give a very different colour to the famous *Avis aux réfugiés* and his subsequent contortions if he had. Then I have been working rather hard at Babeuf for a school lecture and discovering that when one gets at the texts — now rare and almost irretrievable — a good deal of light is thrown on Marx's views about political tactics — that as he raped Saint-Simon for one set of ideas, so he raped poor Babeuf for others; and I can't find that he made even a passing reference of thanks for what he took. Another impressive book was Cahen's *Condorcet* which explains a noble man nobly. And in a very different line I pray you both to read the recently re-published *The Semi-Attached Couple* by Emily Eden. She wrote it in the thirties of last century and after seventy years of silence someone gave it forth once more. Frida and I both think it not unworthy of Jane Austen; and its sly humour and the firm outline with which its characteristics are drawn and (for me not least) its happy ending are altogether charming. I had also one shock. I re-read Hardy's *Desperate Remedies*, and found the style abominable and the incident forced and unnatural. I mentioned this to Gosse at a meeting and he told me that he put it, apart from the *Return of the Native* at the head of everything Hardy had written. So much for

the value of my judgment! I also turned over a gift of poems by the young moderns and found in it four lines by J. C. Squire which should, I think, rank very high in quality, brevity, and point. They run just as follows: —

How Odd
Of God
To Choose
The Jews.²

Something worthy of Voltaire in that!

Among a variety of visitors this week one has pleased us immensely — a young American playwright by the name of Behrman. His play *The Second Man* has made a great hit here, after, I gather, a great success in New York. But he remains absolutely simple and unaffected, and I watched the hero-worshippers, especially female, crowd upon him without turning his head. And when someone asked him what in his success gave him most pleasure he said quite simply that perhaps the Americans who helped him to escape from Russian pogroms 25 years ago would now feel that their effort had been worth while. I thought that fine and I envied him the opportunity of such a feeling. Compare it with a young poet who, like himself, had a conscious metaphysic. I told this to Birrell at tea on Tuesday and he said that he once had seen a man treat George Eliot rudely: "I sat down in a corner," said Birrell, "and prayed to God to blast him. God did nothing, and ever since I have been an agnostic."

Our love to you both. I must not forget to tell you that Sir Austen has sent out to our people in China for full enquiries about Wu.

Ever affectionately yours, H. J. L.

Washington, D. C., February 5, 1928

My dear Laski: A most amusing letter from you of January 21 of academic discussions and government by dons — Hardy, and his burial in the Abbey — (I haven't read *Tess* or *Jude* and somehow shrink from them) — reading — Masson on Rousseau, then Haldane's *Descartes*, Queen V's *Letters* — (I dare say you are right about her — my prejudices are with you — but I suppose there is good to be said) etc. — purchases — and tickling tales of Birrell and the husband of the theosophic dame. I have no such yarns. Indeed my only gossip is from the Greville *Diary* — new edition. I don't like the mode of editing, or the sensational headings to chapters, but I am entertained by his disillusioned pictures of the Royal

²Laski was mistaken in ascribing the lines of William Norman Ewer to J. C. Squire.

Family and the eminent statesmen of the time. He pictures most of them as dishonest and doing fishy things for office.

I made a mathematical conundrum in that connection: $X = > \infty$ — to find the number represented by X ? answer No. 1. The old Duke of Wellington seems to stand highest in Greville's respect — *non obstant* some incapacities as a statesman. I didn't realize before the constant apprehension that George IV and William IV would fall into their father's malady. Indeed Greville seems to think that they did, more or less. Do you remember a sonnet written by a lady, I should guess near the time of Lord Melbourne (qu. Mrs. Norton? I think not) ending as nearly as I can remember "I had a friend who was all this — and more"? I have listened to a good deal of Miss Gertrude Bell's correspondence with pleasure — as perhaps I have mentioned. I had some good letters from her once — but only a few. But my wife turns back to Miss Kingsley¹ who is her pet. I saw her also once or twice, but when I was wanting to talk to some one else. Did I ever tell you of our converse? I said she was lucky to have seen the world before it was cut up into 5 acre lots — which seemed to be its destiny. "Oh, I don't know," said she, "Central Asia was easier to cross in Marco Polo's time than now." I wish now that I had made more of my opportunities. If I last a little longer I shall go into the last survivor business — and swagger on "I remember's." I have some good ones for this country — and some old English judges and generals — and Barry Cornwall² — who was a friend of Charles Lamb and went to school with Byron. Apropos of Lamb (and Birkenhead) you remember that Carlyle dismisses him rather contemptuously as a snuffy person — or something of that sort — and although I am far from justifying either B. or C. I suspect that there should have been drawbacks. I doubt if he or Dr. Johnson would have smelt good. It gave malignant joy to read (in Ste. Beuve?) of someone's saying that Louis XIV smelt like a *charogne*. He has a stout heart who when he visits a cathedral thinks more of that than of his pinching boots.

I am breathing free this Sunday p.m. I have readjusted an opinion to hold (I hope) the bare majority that I have on my side and have a week ahead before we sit. But one always has something to do and when I have I always am worried until it is done. I have a worrying nature — Brandeis says he has not. One generally can get the better of it if one happens to think of thinking about it. After reflection one can meet even great things calmly. The trouble with little daily fidgets is

¹ Mary Henrietta Kingsley (1862–1900); scientist, traveler, and author of *Travels in West Africa* (1897).

² Barry Cornwall (1787–1874), the pseudonym of Bryan Waller Procter, poet, lawyer, schoolmate of Byron, and friend of the *literati*.

that you don't get beyond the bother of the moment. My rambling on in reply to your tales reminds of the story of Alcott going into a shop and wanting two yards of cloth: "I cannot give you money for it — as I do not approve of the use of it and have none, but I will converse with [you] to the value of the cloth." I hope you will not repine at the exchange.

Affectionately yours, O. W. H.

Devon Lodge, 7.II.27 [sic]

My dear Justice: A perfect delight of a letter from you yesterday reminds me of how much there is to say. The most pleasant thing that has happened since I wrote last was a lunch here with Siegfried Sassoon, the poet, and S. N. Behrman the American playwright. We talked for hours, and almost in all with assent. Sassoon, particularly, on the poets was extraordinarily interesting — especially his insistence that Poe and Emerson of all Americans had the purest lyric gift, and his contempt for the jingles of Kipling and his school did my heart good. And Behrman is a delight. A Harvard lad, in his simplicity, eagerness, unspoiltness, he reminds me a good deal of Felix. London has been lionising him, and his poise in the face of the dinners of the elect did my heart good, and I was especially won by his contempt (you will agree) for the supposed philosophy of Shaw and the sugar-and-cream of Barrie. Then we had a most pleasant dinner here with Allyn Young, the economist, in which we talked over research, and agreed warmly that most of the expenditure upon cooperative enquiries in the social sciences where A directs B, C, D, etc., co-ordinating their results, is piffle. A man must live by his own materials, and the experience of them by another is no more adequate than an attempt to know the Year-Books by reading Fitzherbert. An assistant can tell you something, but not too much, of what to look for, but the intuition which turns the key in the lock only comes from constant brooding over the materials. In other words, as I put it to you — *e.g.* — if you want to bear the child you must endure the pregnancy; and in this realm, an obstetric metaphor is peculiarly in place. Then we went to dinner to the Asquiths, in some ways a little pathetic. He is obviously failing physically, and she is as obviously resentful at his resignation of the leadership of the Liberals. The result is that the talk is for the most part one long condemnation of everybody either for allegiance to Lloyd-George or weakminded acceptance of Asquith's resignation. One feels an angry shrillness in it all which makes you realise vividly the utter poison of power. They (the politicians and their wives) obviously cannot bear exclusion from the centre of things. They feel in prison, and their minds fail to concentrate on anything outside the central illusion. He is quite different from his women folk — serene and immersed in reading. But

they feel that a devil is at work which keeps its saviour from the English people.

In reading, one or two things have interested me much. The first part of Wilson's life (Ray S. Baker) is well worth the adventure. It confirms my old views that he suffered from being not a moralist but a theologian, and the women ruined him by adulation. He lacked the ability (my main quality) to look at himself and laugh at the notion that there are some people who really take him seriously. But in his great fight at Princeton I was quite wholly on his side. He had a great conception and his opponents were impossibly mean and petty about it. Then, secondly, *The Cabala* by Thornton Wilder which I conjure you to read. As near as I can describe it, it is a short philosophical novel, exquisite in style, with one unforgettable portrait (a cardinal) and a delicate antiquarian flavour that I lack the power to convey in words. Third, a book by one Sait on the party-system in America, which, unlike most text-books, I thought both accurate and amusing. And finally a critical study of Bayle by one De[l]volve which I thought both fair and illuminating. The more of Bayle I read the more I find to admire; and there really isn't very much of the 18th century that is not implicitly in him. De[l]volve makes crystal clear the intellectual succession and as he writes really well, the book is a distinct joy.

Also I have bought some pleasant things. The one I should most like to show you is fascinating because almost unknown. It is called *Abbrégé de Bodin* and was written, I think, by a lawyer named Lavie in 1754. The fellow had the wit to see that Montesquieu was greatly influenced by Bodin with the result that he discusses each carefully in terms of the other and makes a distinct critical contribution of his own. Then I found two more small Holbachs which, if Barbier's *Dictionnaire* be right, means that I have all his works with one exception and the acquisitive impulse receives a momentary sense of satisfied harmony. You speak of Casanova. I read him five or six years ago with delight. He interested me as being with Mercier,¹ Rétif, and Chateaubriand, the obvious result of Rousseau's discovery of the fascination of egotism in literature. Something Byronic in his poses; and a feeling for the richness of experience that is attractive. And I like, too, his contempt for the life ascetic since I have always had a sneaking sympathy for James's definition of good as the satisfaction of demand. Finally I bought Lenormand's [*sic*] *J. J. Rousseau, Aristocrate* (1790) which is one of the ablest attacks on the gent I have ever read — and I don't in the least know who Lenormand was.

¹ Louis Sébastien Mercier (1740–1814), dramatist who renounced the classical tradition in French tragedy and, denying the achievements of philosophy and science, insisted that the earth was flat and was the center of the sun's orbit.

You will share my pleasure in today's announcement that Sankey, J. has gone to the Court of Appeal — a too long deferred appointment. Atkin, L.J. has gone to the Lords *vice* Atkinson — a very good nomination, though I regret it deeply that Scrutton whom I greatly admire, should have been passed over again. They say it is due to faults of temper — but bad-tempered judges have been promoted before. While I speak of the Bench I must not forget to tell you that a young colleague of mine has discovered a vast collection of private opinions on prize-law written by Stowell when on the Bench for the use of the Admiralty. They are the more interesting because they are often his best opinions in the making and you can trace out the way his mind moved to his conclusions. If we can get the money, we propose to print them.

And I end with a story. Theo Mathew² is the son of Mathew, L.J. and a witty junior at the Inner Temple. The other day, when lunching there, he found his usual table full of Hindus, negroes, Angolese and Chinese with one lone Englishman. Mathew walked up to him with outstretched hand saying "Dr. Livingstone, I presume?" Could perfection go further?

Our warm love to you both.

Ever affectionately yours, H. J. L.

Washington, D. C., February 18, 1928

My dear Laski: Two A-1 letters from you — one closely following the other and ending with the admirable tale of Matthew [*sic*] — I suppose it was his father that took me to Court one day to witness a trial before Sir A. Cockburn — in which M. was counsel on one side. Cockburn seemed to be busy correcting proof — it was supposed of his charge, in the *Tichborne* case, while the trial went on. I was much struck by the way it was conducted. One side stated the facts — the counsel on the other side at a certain point: "I shall have to trouble you to put on evidence upon that." If he did it didn't take long and Cockburn said he would direct a verdict. Thereupon one side said that he should like to be allowed to address the jury — which he did in a short argument — and then Cockburn charged strongly on the side for which he had been inclined to direct the verdict and the jury found accordingly without leaving their seats. Then one jurymen stood up and said, "I understand" — (a certain fact, I forget what) to be so and so." "No, no, no" said the others — but he had put his finger on what seemed to me the point in the case — which I thought the judge and lawyer had overlooked. The jury put their heads together — discussed a little among themselves, and then brought in their verdict the other way — I thought rightly — with

²Theobald Mathew (1866–1939); son of Sir James Charles Mathew (1830–1908), judge in the Queen's Bench division. Versions of the son's wit were preserved in his *Forensic Fables* (1928) and their *sequelae*.

little help from Judge or lawyers. My memory may have distorted things, but that is the way I have remembered it for many years. I don't believe that I need to explain why it seemed to me to illustrate what Judge John Lowell¹ said to me when I was a young lawyer: "They do everything on honor in England." Well, this p.m., our last conference before going in again on Monday for 4 weeks of argument. I had but one case to deliver — a majority opinion of no great interest — Brandeis dissenting² — but at the last minute McReynolds said that he wanted to write something (against the op.) and so it went over — it is rather aggravating to have things hang up in that way because the Judge doesn't take the trouble to be ready. He has three weeks of vacation for it. I tried to put a shovel full of coals on his head by handing him my prospective dissent where we stand 5 to 4 unless he changes his mind, and where he has the majority opinion to write — which he has not started on yet.³ I despise the notion that I think some of the last generation had that it was like opposing counsel in Court and that it would be fine to spring something unforeseen on the other side. I read them my views in another case⁴ in which the following vote showed that I was in the minority but on which I will have my whack if I live, if it is my last word.

Brandeis and I are so apt to agree that I was glad to have him dissent in my case, as it shows that there is no preestablished harmony — I have had almost no time to read — having had two hours of driving on pleasant days. I have finished Greville's *Diary* and that is about all. I think I mentioned Demogue, *Notions fondamentales du droit privé* — which I was compelled to get hold of by the remarks of Morris Cohen in an essay. Demogue is a good man evidently — but for 100 pages he has told me nothing that I didn't know — substantially — has illustrated to me that some problems are not dug down to the foundations as well as with us — and yet I haven't the moral courage to stop — but feel obliged to toil on through 559 more pages in a print that tires my eyes for fear of

¹ *Supra*, p. 4.

² Holmes delivered no opinions on February 20. On April 9, Holmes delivered the Court's opinion in *Casey v. United States*, 276 U.S. 413, which had been argued on January 11. Dissenting opinions were delivered by McReynolds, Brandeis, Butler, and Sanford, JJ. The majority sustained provisions of the Anti-Narcotic Act which made the absence of revenue stamps from packages of drugs *prima facie* evidence of unlawful possession. The majority also found that the government was not chargeable with entrapment of the defendant.

³ Not identified.

⁴ Quite probably *Black and White Taxi Co. v. Brown and Yellow Taxi Co.*, 276 U.S. 518 (argued January 13 and 16, decided April 9, 1928). Holmes in his dissent, concurred in by Brandeis and Stone, JJ., objected to the theory that Federal courts in deciding common-law questions arising within a particular state could decide the law as they saw fit, without regard to state decisions.

missing something — or because I don't like to back out. Your last letter but one was the first news I had had of the death of Felix's mother. I referred obliquely to it in writing to him — but could not do more.

I vehemently disagree with the "contempt for the jingles of Kipling" — I agree that Kipling's attitude toward life seems to me wanting in complexity and not interesting — but it will take more than Sassoon to convince me that Kipling ought not to stir the fundamental human emotions. I think he does — and that simple thinkers often do. A student of mine long dead⁵ spoke with contempt of the fighting lines in *Henry V*. His widow was a mainstay of the sympathizers with Sacco and Vanzetti. I was not with him.

Affly yours, O. W. H.

Devon Lodge, 20.II.28

My dear Justice: A letter from you¹ — as always a delight — reminds me that nearly a fortnight has gone by since I last reported. In mitigation, I plead the state of public business. I have had to write a vast obituary notice of Asquith² for the Manchester *Guardian*; sit twice on the Industrial Court; go to Oxford to lecture; and entertain twice for Hocking, the Harvard philosopher.³ Add to that a cloud of committees, and you will, I hope, accept the explanation and say that there has been no contempt of court.

I was much moved by Asquith's death. He wasn't, I think, a great man, for that word ought to be kept for the originator or the man who profoundly changes by skill in adaptation; and beyond the limit on the House of Lords he was not, I think, the author of anything big. But he brought qualities to politics which are rare; absolute loyalty, supreme lucidity of mind, refusal to truckle to the mob, and a sense of honour as exquisite as I have ever met among politicians. He had the great defect of finding decisions difficult. But he really was a great gentleman with less of the rancour in his temper than any of the political breed I have met. There is no one quite of his type left, and this new world of a stunt press and a devotion to the slogans of the market-place makes it difficult to hope for more of his kind. *Inani perfunctor munere.*

Oxford interested me a good deal, though in some ways it was depressing. I was struck by the complacency of the dons and the preciousness of the undergraduates. The former clearly thought that the world was an

⁵ Probably Glendower Evans (1856–1886), who had been a student in Holmes's law office in the fall of 1881.

¹ *Supra*, p. 1022.

² Lord Oxford and Asquith had died on February 15.

³ William Ernest Hocking (1873–), Professor of Philosophy at Harvard, 1914–1943.

oyster they had opened, and their ignorance was profound. They each had a little patch to cultivate and they saw no reason to go outside it. And talk of America produced the astounding view that the great Americans of today were Lowell and Murray Butler. I mentioned books like Parrington or Beard in vain. When I was told that there was no great political thought in America and summoned the period from 1780-1840 as my compurgator and argued that only the greatest epochs could compete with it I was met with polite incredulity. And I was irritated by the immense volume of clericalism everywhere. Jesuits, Puseyites, Dominicans, Cowley Fathers, you met them at every turn. The times demand a Voltaire to show what the whole farce means. One college was rent in twain over the practice of auricular confession; another was passionately excited over the reservation of the Sacrament. Some men devoted their energies to preventing the scientists from having any more buildings in the Oxford Parks. Big sweeping views, a sense of the vastness of our problems, the excited hunt for novelty, these didn't exist. I tried names — Meyerson, Morris Cohen, Thibaudet; but they meant nothing. And I left feeling that the glories of London where one might be a small fish, but where, at least, the stream rushed by in the torrential excitement was worth a hundred Oxfords. The reply, I gather, is the virtue of the life contemplative; but that assumes the fact of deliberate reflection on great issues and of that I saw no wide evidence.

On the other hand I remark that Hocking is a ghastly bore. Right-minded, earnest, good, but he can say things like "the world needs peace" or, "Hegel is a very great man," or "the Gospels are exquisite" as though he were communicating new truth. Each idea of his comes out with a pleased self-regard as though it was a new law of gravitation; and when he told me that the League of Nations was very important, I felt I wanted to shriek. But at the second dinner there was a young American lad from Yale (one Lippincott)⁴ who was a delight such as one rarely experiences. He cared about art, and cared so as to want to know what happened in him when he cared. He was full of enthusiasms which I approved because I shared them; and he especially delighted me because he had that eagerness which makes the world too short for the amount of exploring there is to be done. I hope one day he will come to see you in Washington. He reminded me greatly of what Felix must have been at twenty-four.

Of reading, I have done little that is worth report. But I add that one or two things in the way of work were distinctly worth reading. A book by one Lindsay Rogers on the *American Senate* was distinctly worth read-

⁴ Presumably Benjamin Evans Lippincott (1902-), who was awarded a Ph.D. at the London School of Economics in 1930, and later became a professor of political science at the University of Minnesota.

ing and opened vistas I should like one day to explore. Also a book on the *History of Contempt* by Sir J. C. Fox really exploded Wilmot's case and gave me the pointers for a piece on constructive contempt which I have long been anxious to write.⁵ Our English procedure whereby X and Y decide that Z has been unfairly criticised after a decision has been made and without hearing evidence opened the door, I think, to very serious abuses; and a recent case here (*R. v. the New Statesman*)⁶ was little short of a scandal. Then I read an extraordinarily interesting history of the French Revolution by A. Mathiez who is the great swell on Robespierre and certainly has evidence about him which one simply does not get in the classical histories. In a lighter vein I commend "*Mrs. D.*" by G. F. Bradby which is a delicious analysis of English suburbanitis and shows it to be as easy to have the small town mind just outside London as it is in Fargo, North Dakota.

I was interested by your reflections on Greville, especially your liking for Wellington which I warmly endorse. I would have liked the book untrimmed, but, certainly, there is nothing better except Saint-Simon in that *genre*. I shake Mrs. Holmes warmly by the hand over Miss Kingsley — the big West African book is a stand-by of Frida's and mine.

I liked the G. Bell, but felt that much printed there was on the whole small beer. But I did not know her and can well see that personal contact may have given illumination. Apropos of George IV, did I ever tell you that I knew the grandson of the clergyman to whom he offered £1000 to marry him to Mrs. Fitzherbert? The price was considered too small for the risk; but when the row came he claimed and got a canonry as compensation for his disinterestedness. Those were spacious days.

Our love to you both. Here the garden is a mass of crocuses and snowdrops, and my window-boxes have magnificent mauve tulips.

Ever affectionately yours, H. J. L.

Washington, D. C., March 1, 1928

My dear Laski: Your letter 20.II.28 stirred my sympathies wondrously and made me wish I could be there or jaw with you. Your description of the dons of Oxford seems to me a description of the usual Englishman not enlightened by travel. To how many the ultimate is "We don't do that in England." I grieve to hear of the irruption of Clericalism. I had

⁵ "Procedure for Constructive Contempt in England," 41 *Harv. L. Rev.* 1031 (June 1928). The case decided by Wilmot, J., was *Rex v. Almon*, Wilmot's notes 243 (1765).

⁶ 44 T. L. R. 301 (1928). The King's Bench there held that newspaper criticism of judicial action could be punished summarily as contempt of court if the impartiality of an individual judge were questioned and if the criticism tended to undermine public confidence in the judiciary.

(too rashly) assumed that the civilized man everywhere had a quiet substratum of scepticism even if he didn't show it. But isn't this at least largely true?

I have been staying at home this week with a cough that has bothered me at intervals for many years. My doctor down here, . . . died a few days ago — so I got the one who looks after the C. J. (in his more general aspects — he says he has one for each end) — and he is inclined to my opinion of the trouble and is trying some painting on my throat. I have hopes of relief — at all events the spells pass away after a time. The cases are sent to me and I shall send my votes (as we objectionably call them) to the conference. As I get up latish I am kept pretty busy — but I have had time for a little diary of Dr. John Ward who was Vicar at Stratford-on-Avon a few years after Shakespeare's death — has a few words about him and a number of shrewd remarks — a little book, but worth looking through. Also Charles Francis Adams's¹ *Autobiography* which I never read. He is brutal to himself and his papa — but just — he saw pretty straight. It is curious to observe, alongside of his judgment of himself as not having exceptional gifts, the tone of importance that goes through the story — and so dreary — those poor men were born without the capacity of joy. I knew the whole lot pretty well — got much from them — suggestiveness from Brooks — the best criticisms of some of my speeches I ever had from anyone from Charles — and while Henry chilled my soul when I came home tired from Court and stopped in, to be told how futile it all was — he was grumbly generous to me when I first went to London, in the way of taking me about — and when he gave up his Harvard professorship sent me a lot of his books on early law. Ralph Palmer² — nephew or cousin of Sir Roundell (as he was in my day) thought Henry a great thinker. The whole lot certainly were unusual men. I may have told you of Bill James coming back from meeting the three and saying it was like meeting the augurs behind the altar and none of them smiling. They seemed to stir him up as he also said, "Powerful race, those Adamsses, to remain plebeians after so many generations of culture." This if taken seriously would be unjust — because, though capable of queer things, they had an inward delicacy that was very far from plebeian.

¹ Charles Francis Adams (1835–1915); descendant of the presidential Adamsses; son of the American Ambassador to Great Britain during the Civil War; brother of Brooks Adams and Henry Adams.

² Ralph Charlton Palmer (1839–1923), lawyer and man of affairs, had become a close friend of Holmes during the latter's first visit to England in 1866. Palmer's father, George Palmer (1772–1853), was the uncle of Sir Roundell Palmer (1812–1895), first Earl of Selborne, who was twice Lord Chancellor, first from 1872 to 1874 and again from 1880 to 1885. Holmes's friend had been secretary to Selborne during his second chancellorship.

I don't think I ever heard of Hocking — your account makes me chuckle — and I hope I shall see your young friend from Yale. I must try to remember to look into that history of contempt — I have dissented once or twice on that theme. You amaze me by saying, if I understand you, that criticism of an opinion or judgment after it has been rendered, may make a man liable for contempt. I thought that notion was left for some of our middle western states. I must try to get the book and the decision. Well — I have done as well as I can for a seedy worm (but nothing serious). My love to you all. *Affectionately yours, O. W. H.*

Devon Lodge, 25.II.28

My dear Justice: Let me begin with my triumph. I have found, for six pounds, a copy of Althusius's *Politica methodice digesta* (1610) and it lies before me on the table as I write. I am immensely proud of it, as there seem to be seven copies only in existence and no other in private hands. It turned up in a Berlin catalogue, and after a moment's doubt whether it would not have been snapped up before I could reach it, I decided to telephone to Berlin. This I did, and, to my joy, there it still was. It is a beautiful quarto, vellum bound, with wide margins, and most exciting reading. I wish I could show it to you. But you will guess how my week has been sweetened by it.

Of other news but little. My nose is being kept to the grindstone rather more than I like and there are still three weeks before release comes. I slipped out to dinner last night and went to Haldane's. He had Barrie and Kipling there. The former hardly spoke a word, but sat like a grim mouse in a corner until it was time to go. Kipling literally amazed me. He took command of the talk (not an easy thing to do when Haldane is there) and laid down the law like a member of the Ku Klux Klan. I thought he had an essentially vulgar mind, incapable of any real finesse or delicacy; and his main reply to argument was a bludgeoning "I don't agree with you" which was never accompanied by any effort to lay his mind alongside yours. I saw no power of reflexion, though there was a real gift of happy phrase. I suppose it is stupid to expect that a great story-teller should have other gifts than the power of telling stories, but I certainly expected something better than I encountered. Let me add, too, that he talked for applause in an irritating way. When he had said anything especially good he looked up as if waiting for you to clap your hands. Haldane amused me immensely. Much of what Kipling said was gall and wormwood to him. But he liked the idea of having him at his table and encouraged him to perform rather as a man persuades his dog to go through tricks for his friends.

I turn to other things. I have been reading much this last week on contemporary France — one or two things were most illuminating. I don't know if I wrote to you of Benda's *Trahison des clercs*; if not, I think it would please you as much as it did me. And I was also impressed by Alain's *Elements d'une politique radicale* which has both mind and heart in it. I read, also, Charles Maurras's *Avenir de l'intelligence* which contains the (to me) sympathetic thesis that the business of the intellectual in society is to criticise the values the society maintains; descent into the market-place, he argues, makes a thinker lose his perspective. I meditate a piece on the social function of intelligence, so that I shall not write a disquisition here. But I feel pretty certain that immersion in the machine is fatal to the real business of thought and that the real need is to think out the liaison between the superior mind and the practical mind. How can one be sure for instance that a politician is made aware of the kind of wisdom he would get from reading Morris Cohen? Is it enough that it should filter to him at seventh-hand, say in an essay by Walter Lippmann, in which stereotyped sophistication has blunted the edge of the original vision? I don't know; but I am sure the problem of these margins between categories of effort is more and more important. By the way I must not forget to add that I have learned much, and with delight, from a book by Edmond Villey called *Les sources des essais de Montaigne* which I conjure you to think of for the time when Beverly Farms swims once more onto the horizon. And I think I have already mentioned to you De Ruggiero's *History of European Liberalism*, which is excellent. Did I speak of Mumford's *Golden Day*, a good book on America as interpreted by its men of letters? And may I pray you to think of Hobbes's *Elements of Law*, edited by Tönnies, in a text (Cambridge Press) which makes the mss intelligible for the first time and is really illuminating.

Another little adventure has pleased me. A genial soul has published a new edition of Junius with a vast introduction purporting to prove that Junius was Shelburne.¹ The proof is that one of Junius's letters is written on paper with a watermark which is the same as some of the letters of Shelburne and that J & S agree on eleven different points. I got the volume for review and spent a couple of hours in the British Museum on the matter. This enabled me to show (I) that Bentham, Blackstone, C. J. Fox and Burke used paper with that watermark; (II) that on the days when Junius wrote private notes to his publisher of which the consequence is apparent in the newsprint the next morning, Shelburne is known to have been in Italy, and, therefore, to conclude that a 49th name may be added to the 48 which the new editor dismisses as im-

¹ Charles Warren Everett, *The Letters of Junius* (1927).

possible. I needn't add to you that I am a whole-hearted Franciscan;² that kind of probability seems to me definite proof on the Sherlock Holmes principle that when you have excluded the impossibilities, whatever remains, however improbable, is the truth.

On Tuesday last I spoke on Rousseau to the philosophical society of a women's college here and was moved to reflection upon the nature of the woman don. I am tempted to believe that forcible marriage would be good for them. I met three philosophic ladies who all were like the late Mrs. Proudie in temperament and spent tea-time in explaining to me the unreliable character of the male sex. They were the modern breed of feminist who, I gather, regard man as an excrescence and would like the original Virgin birth to be capable of infinite repetition. They dress badly; they deliberately forego all grace and charm; they call you by your surname; and they regret the necessity of having men teachers for women. Oh God! Oh Montreal!

My love to you both.

Ever affectionately yours, H. J. L.

Washington, D. C., March 7, 1928

My dear Laski: A delightful letter from you to which I can answer but a word. Tomorrow is my birthday and already I am somewhat crowded. Also the doctor keeps me in the house — for a cough — nothing serious — same old trouble — but he insists on my staying at home. I do the same work here and am in all the cases that are being argued.

I am not impressed at what you say about Kipling. Many years ago I made up my mind that he did not interest me — that his view of the universe was too simple — and since then I thought that he had a breakdown. But as a story teller, and in spite of you, as a verse writer, I think he makes a direct appeal to the simpler emotions which we never are too sophisticated to feel when a man has the gift — as he has. Also, where Stevenson laboriously selects a word and lets you feel his labor, Kipling puts his fist into the guts of the dictionary, pulls out the utterly unavailable and makes it a jewel in his forehead or flesh of his flesh with no effort or outlay except of the pepsin that makes it part of him. But I thought he was finished years back.

I am tickled that you should have encountered the holiness of woman and been assured of it by herself. Lester Ward in one of his books inti-

² Despite the attempt of Charles Dilke in his *Papers of a Critic* (1875) to disprove the contention that Sir Philip Francis (1740–1818) was the author of Junius, men of learning have continued to accept the Franciscan hypothesis as most persuasive; see, e.g., Leslie Stephen's "Chatham, Francis, and Junius," *3 English Historical Review* 233 (April 1888). Laski's review of Mr. Everett's book has not been identified; see, however, notice by L. B. Namier in *42 Nation and Athenaeum* 688 (February 4, 1928).

mates that she produced man to amuse her — having previously done very well without him to aid in continuing the race. With your belief in some apriorities like equality you may have difficulties. I who believe in force (mitigated by politeness) have no trouble — and if I were sincere and were asked certain *whys* by a woman should reply, "Because Ma'am I am the bull."

How fain were I to jaw with you but I must say good night. Tomorrow I am 87 — and still Oliver asks for a little more — not that he is not prepared to shut up with good grace — but, apart from the pleasure of continuing as long as one can, to play one or two little fool games — the newest one to outlive Taney — (who died 87, 6 or 7 months old) remaining active — not that I really care a tuppence for that sort of thing.

Affly yours, O. W. H.

Devon Lodge, 9.III.28

My dear Justice: I hope that cough has gone; I have been in bed for a few days with a nasty one and I have a healthy dislike for them. Please report good news.

I have been extraordinarily busy this last fortnight. Committees seem to have piled themselves up quite interminably; and I have sat long and anxiously on the most complex case on the Industrial Court. Then a learned German professor (Sombart)¹ turned up to lecture at the School and I had to give him a dinner which was not easy as he spoke only German and French and three hours of interpretation in and out of three languages is not the best aid, I find, to digestion. In a way, he was most amusing for he took himself with the most profound seriousness. Each person introduced was asked whether he had read the books of the great man, if yes, which he preferred, if not, when he proposed to do so. I only attended the first of his lectures which began with an explanation of how he and Max Weber, but principally himself, had changed the mind of learned Germany on all manner of important questions. When he was off my chest there arrived a learned Hungarian who desired to investigate the new Trade Union Act in operation. I explained with exemplary patience that as only one case had occurred under it, no one could usefully say much on the scheme at work. But the good man was not to be deterred from work by objections of so feeble a nature, and demanded letters to every member of the Trade Union Council. I gave him five and spent long minutes of remorseful apology over the telephone to irate

¹ Werner Sombart (1863–1941), Professor of Economics at Berlin since 1917. Sombart's principal work was Marxian in attitude and emphasis, as in his *Der Moderne Kapitalismus* (3 vols., 1902–28); later, however, he advocated national socialism in his *Deutscher Sozialismus* (1934).

officials who demanded to know "who the hell this queer guy is" who asked them if they would go to jail or buy over the jury when the Act began to operate and had a notebook ready for the registration of their answers. And, thirdly, a German student demanding to know if Montesquieu's letters to English friends were available and would not accept my assurance that I knew of none unpublished but came back day after day to pledge himself that if I would only tell him I should have full acknowledgment in the preface. Fourthly an Australian gentleman on the model of Huxley's man "— Have discovered the truth; shall I come over?" He had read my books; thought I was not unintelligent; world needed an absolute measure of value; he had it; I must give him a full opinion of it; take the year's output of wheat; divide it into the year's issue of currency; that is an absolute standard; chairs and tables, books and dolls; can be expressed in terms of it; once adopted, there will be no more social problems; think it over; will call to see me in a fortnight's time; I try vainly to reproduce his urgently staccato style. I omit the biography of himself which emphasised the fact that he had an ancestor who ruined himself for Charles II (I thought this a most dubious connection) and that he had been awakened to Thought by reading Bryan's great speech on his nomination as Democratic candidate in 1896. Do you wonder that I am a little tired and that I shall regard myself as licensed not to be at the School a fortnight from now. Of other things there is not much to tell. The best is the discovery of a complete Savigny in eighteen volumes, bound in full calf and in perfect condition, for thirty shillings. I wanted badly the *Roman Law in the Middle Ages* and was grateful. Also a very nice Suarez, *De Legibus* which I have long coveted and found reasonably. But mainly I reserve myself for Paris next month where there is much I hope to find.

In the way of reading some things I recommend warmly. A recovered novel *The Heroine* I urge you to read as one of the most amusing skits (*circa* 1810) on the Rococo extravaganza *temp.* Horace Walpole that I know. Then I read the volume of *Ricardo's Notes on Malthus* which Johns Hopkins have got out; it repays perusal, but with *longueurs*. Much more impressive is Russell's *Outline of Philosophy* which I thought a powerful book — wrong on a number of things, *e.g.* causation, but well worth reading; and Wyndham Lewis's *Time and Western Man* which makes effective hay of Spengler *et hoc genus omne*; and a little volume *Imperialism and Civilisation* which puts effectively and simply the elements of the clash of colour. And, in bed, the first volume of Curzon's *Life* which revealed him as even more intolerable than I ever imagined. Think of a man who hales his college servant before Jowett for daring to put a cracked teapot on the table; or takes notes of his own mental state in any interval of leisure; or assumes at a meeting that a vote of

thanks to him must be moved separately from that to the other speakers. Yet he seems to have suffered intolerable pain from spinal curvature all his life and it may that much should be pardoned him on that account. But he is rather like the *Times* in its patronising mood.

I was glad to note your surprise about our contempt case. I am sending you separately a full report. I thought such a proceeding quite obsolete and was angry with the judges for their attitude and the editor for not standing his ground. In any case, I doubt whether such methods do any good. Our new chief justice (Hewart) is, I hear on all sides, a sad failure; self-satisfied, pushing, and rather brutal. Moreover he has the fatal habit of making asides for the press which, next to actual corruption, is the worst judicial sin I know. But I shall blow off my wrath in the *Harvard Law Review* — I hope with the prospect of carrying you with me.

I write in the midst of an unexpected snowstorm which has made London almost impassable.

Our love to you both.

Ever affectionately yours, H. J. L.

Devon Lodge, 19.III.28

My dear Justice: A delightful letter from you tells me that not even the 87th birthday has charmed away the cough. I hope the coming of Spring will do so. Yesterday we motored out to Box Hill (Meredith's old haunt) and the trees in half-bloom, especially some almond blossom, were a sight for sore eyes. And I found an amusing stone in a churchyard there explaining that at this spot in 1800, John Kra, the Dorking eccentric, was buried upside down at his own request. Whether vertically or horizontally the epitaph did not say; and I did not feel that I had the right to attempt exhumation.

It has been a quiet time since I wrote last, with the blessing that term is over. I have been to committees till I was sick of them and have had, for my sins, to accept nomination as an appointed member of the Education Committee of the London County Council; which means that I am supposed to supplement the dubious skill of the elected members by the exercise of a little competence. I was not anxious, but Haldane was very insistent that I should, so with a shudder of envy for the lost time, I succumbed.

I had an amusing dinner at Haldane's last night, with Winston as the other guest. The latter being about to give birth to a budget was full of the vigour of intellectual pregnancy and gave us a list of the dozen greatest men in the 19th century. Characteristically it contained not a single scientist or thinker and so I drew him on to a discussion of their influence. It was really most illuminating. He had never read a line of Aristotle, Bacon, Hobbes, Descartes, Locke, Rousseau, Hume, Hegel, or Kant. He

had read every line of Machiavelli, any printed volume summarising Napoleon's ideas, La Rochefoucauld, Stendhal (whom he greatly admired) and such like. Pascal and Goethe were hardly names to him; and of Montesquieu he knew only the lubricious *Temple du Gnide*. He watched my amusement with complete bewilderment and could not be made to understand that philosophy had the slightest relevance. When he had gone Haldane told me that years ago he had lent Winston Eckermann's *Conversations with Goethe*. It was returned in two days with the remark that he literally could not understand what they were talking about.

I went with Frida to another dinner that was amusing. I sat next to a retired judge of the county court who had been a distinguished wrangler in his day and thought this generation soft. He explained the things a wise man refuses to have any dealings with: (I) women (II) doctors (III) betting men (IV) clergymen (V) the Court of Criminal Appeal (VI) the Judicial Committee. Finding out that I was a university professor he explained (I) that no one ought to go to a university unless he knew the calculus (II) that the study of Laplace ought to be compulsory (III) that Newton was the greatest man, except Christ, who ever lived (IV) that all good mathematicians would make good judges. The greatest man he had ever met was J. J. Sylvester.¹ If Gauss² and Jacobi³ were in hell he hoped to go there. He never read novels; but he found he had to give up the theory of numbers as a hobby for retirement as it made him too excited. He was really a charmer and full of a winning smile at his own absurdities which I found enchanting. He was 93, and only retired, he said, as a protest at the quality of the younger men who were being given him. "Nothing had gone right since Bowen died."

In the way of reading, not very much. Mostly I have been going to bed early and reading Mommsen — always with delight, rarely with conviction; and a good brief history of the French Revolution by Mathiez who is a skilful and learned enthusiast for Robespierre. Also Hobbes, *Elements of Law* in a new edition by Tönnies, with intense admiration. Really that fellow, though quite wrong, has the most powerful mind in English political philosophy. Did you ever read the account of him — quite delightful — in Aubrey's *Brief Lives*? The spectacle of Hobbes singing prick-song to himself in the early morning to expand his lungs while not awakening the household, and telling Aubrey that he cannot remember being drunk above a hundred times is really glorious. And Frida read

¹ James Joseph Sylvester (1814–1897), English mathematician, Professor of Mathematics at the Johns Hopkins University and later at Oxford; founder of the *American Journal of Mathematics*.

² Karl Friedrich Gauss (1777–1855), German mathematician who made notable contribution to the theory of numbers.

³ Karl Gustav Jakob Jacobi (1804–1851), Professor of Mathematics at Königsberg and expert on elliptical functions.

to me a novel which gave us both great pleasure as a picture of an England I suppose the next generation will hardly know. It is called *Wintersmoon* and is by Hugh Walpole. If it comes your way, it would, I think, suit the acerbities of solitaire.

I have now six weeks of freedom. I propose to get a paper done for the *Harvard Law Review*, possibly on Constructive Contempt,⁴ and to take my holiday in Paris, talking to people and hunting books. But mainly I want to get the papers straight so as to begin writing the book on French thought. I have read all I safely can, and have reached that queer stage where I must set something down or burst. You will know the feeling. I must not forget to say that Haldane last night remarked that he had just fortified himself by a decision of yours in a P.C. case and that its terms had warmed his heart.

My love eagerly to you both.

Ever affectionately yours, H. J. L.

Washington, D. C., March 22, 1928

My dear Laski: You send me such interesting adventures with people and books that I feel like the often quoted Vicar of Wakefield "All ones migrations from the blue bed to the brown" or words to that effect. I write opinions, dissents, and examine *certioraris* and then begin over again. However, when I received a telegram on my birthday from my *quondam* brother Clarke — saying why not live and come with me to Rome and Athens or if you prefer to (some named paradise in the Pacific), I answer that not only Age with his stealing steps hath caught me in his clutch but the joys of sophistry beat scenery and the past. Are you not with me? I have this moment come to my first leisure for a long time, and I don't believe it will be leisure beyond the next mail. But I am cherishing hopes to finish that damned Demogue I told you of, I think — recommended by Morris Cohen. Also I have *Aperçu d'une théorie générale de l'état* an abridgement I gather by Hans Kelsen of a large work by him in German. God knows how little nourishment I get as a rule from such works — but I must look at it. Also Cohen sends me type-written portions of a work — parts of which have appeared as articles, *Reason and Nature* — an essay on the meaning of scientific method, and dedicated to me — I am proud. Also (in the way of boasting) Ludwig — the author of the lives of Napoleon, Wilhelm II, Bismarck, etc. called on me some time ago and this week my driver, the faithful Charles, handed me a copy of the *Washington Herald* in which Ludwig seemed to have interviewed a number of our great men and wound up with a puff of me that I should blush to copy. Luckily, as I no doubt have said often, one who thinks of man as I do can't have a swelled head. Also,

⁴ See *supra*, p. 1030.

although I only glanced at the article, I had the impression that L. was saying soapy things about the whole lot of us, nevertheless, as I liked him when we talked, I was more than pleased to know that he had carried away an agreeable impression. Of course one runs through light things that don't add much to one's credit side in the intellectual world. I think I mentioned Charles Adams's *Autobiography* — last night I finished a pleasant volume of Thackeray's letters to Mr. Brookfield. His style soothes one's ear. But I made the reflection that no man of that time ever quite looked himself in the face, or was quite candid in his thought. I leave it as an impression — not amplifying. You speak of Russell's *Outline of Philosophy* — second thought suggests that this may be Bertrand in a book I've not heard of. I thought at first you had fallen on my friend of last summer, Will Durant's *Story of Philosophy*, (fancy a man who calls himself Will writing on philosophy), an entertaining enough book — but one that I would spare you. I believe its success led him to think himself competent upon the theme and to write articles on serious subjects — I read a little of one and said no more for me, thank you. Things occur to me to tell you, but I forget them before I write. I must away now — and sooner than wait and resume, I will send this off.

Affectionately yours, O. W. Holmes

Devon Lodge, 27.III.28

My dear Justice: A week of vacation has made me feel again a human being. I have been to the play; I have dined out; and I have lain in bed luxuriously with the complete works of O. Henry at my call. And on April 4th I go off to Paris for ten days or so.

Much the most interesting thing that has happened since I wrote last has been a dinner at the House of Commons where I met Sumner, the Lord of Appeal. He is an amazingly powerful person, with a certitude on all matters, as hard as nails, and with views compared to which those of McReynolds can only be described as socialist. He interested me enormously. He is widely read, a fine classical scholar, entirely self-made, and yet completely deaf to external opinion. He said for instance that discussion in the Court of Appeal was for him a waste of time, he had made up his mind when he read the brief. He attacked me for disbelieving in a second chamber and insisted that no thinker of repute ever believed in single chamber government. I instanced Franklin, Sieyès, Tom Paine, Bentham; he swept them all aside and said that of all writers on politics only Aristotle, Machiavelli and Hobbes really counted. His heroes were Caesar, Napoleon and Bismarck, because they really knew what they wanted. I said that was because they wanted only what they knew and

was an expression of their limitations. He spoke warmly of your decisions but regretted a tinge of scepticism in them; a judge must bring down his fist with a thump. Then a dinner with Sankey to meet (and dislike) the L.C.J.¹ Have you ever noticed how difficult it is to like men who screw up their eyes like pigs? He seemed to me full of malice, and to have a certain queer sadistic pleasure in long sentences as a deterrent from crime. But his knowledge of Latin (even down to the late silver age) left me envious and gasping. At Sankey's was another judge — Mackinnon — who was quite charming — polished, kindly, and a man of the world. He told us one charming story of Halsbury at 96 envying the young men at the bar because no moment in a legal life is so exquisite as the first time you are complimented from the bench. He and MacNaghten were so distinguished by Baron Parke on the same day and it was a bond between them all their lives. Sankey told us of his interview with the Prime Minister on his appointment to the Court of Appeal — the P.M. full of excitement when the formalities were over because Sankey was an expert in a patience he was trying to acquire.

In the way of books I have been reading a good deal. The best, I think, was a study of Spinoza by one R. A. Duff which, though a little difficult, amply repaid the price of entry and impressed me with the certainty that Spinoza had greatly influenced Rousseau. Then a queer volume by American writers on the interrelations of the social sciences² which I thought a comment on my pet thesis that it is usually sheer waste of time to discuss method. Write your book and if you have something real to say the method will take care of itself. A still more queer book was Fay's on *The Revolutionary Spirit in France and America* (c. 1776–89) which seemed to me to prove by excessive documentation that in those years a large number of Frenchmen were interested in America and a large number of Americans interested in France. But I think I could have made its point with ease in say fifty pages instead of nearly five hundred. Another book that I thought admirable was an edition of Mandeville's *Fable of the Bees* by one Kaye — a young American scholar — which was not only excellent reading (Mandeville certainly *could* write) but also was full of *aperçus*. It explained to me that clever poem of Voltaire's *Le mondain* that you may know. And it puts the relevant chapters of the *Esprit des lois* in a new light. I wish I could do a critical study of M. and accompany it by an edition of the *E.D.L.* The more I read him the more I am sure that with his balance and poise he knows each time how, in your phrase, to strike the jugular. And to my knowledge there is no

¹ Lord Hewart.

² Presumably William Fielding Ogburn and Alexander Goldenweiser, *The Social Sciences and Their Interrelations* (1927); see, *supra*, p. 1006.

really adequate book about him. I think Eugen Ehrlich's essay in your number of the *Law Review* much the best thing I know.³ And a study of Mandeville would include a great final chapter on his book and Tocqueville's as models for the student of affairs who really wants to create on the grand scale. Have you ever read Pierre Marcel's *Tocqueville* — an admirable book with some very interesting *inédits*? Which, somehow, reminds me of an amusing story of Bryce. A Japanese called on him and asked for suggestions of books on America. Bryce poured out a vast bibliography and saw a sense of bewilderment on the Jap's face. "Well, well," he said, "read my book and Tocqueville's, and if you are really pressed read mine." Birrell, who told me this, disliked Bryce intensely and when I asked why, said it was because Bryce had never asked himself a really basic question in his life. On religion, for instance, he always refused to read anything, however important, that might disturb his mind; and Acton said that the only subject he really exhausted was the origins of the papacy because the more he plumbed it, the less inclined he was to doubt Presbyterianism. But Birrell has a pleasantly imaginative malice, and I do not vouch for these stories.

I have bought nothing this week except a very pretty copy of Bellarmine's answer to Barclay in which a past owner had written in 1613 "This booke hath become so diere by reason of his majestie's edicte that I did have to pay Mr. Baldwin fower shillings for the same"; I reserve myself for Paris. I was much tempted by a letter of Rousseau's written when on the way to Paris and full of a young man's enthusiasm at the approach of great hopes to be fulfilled; but it was ten pounds and, I thought, an unjustifiable luxury.

My love warmly to you both.

Ever affectionately yours, H. J. L.

Devon Lodge, 4.IV.28

My dear Justice: A time of peace since I wrote last week, mainly taken up by the writing of a simple little article for the *Harvard Law Review*. But we have indulged in a theatre and a dinner party and on this second I must dwell. It was given by Winston Churchill to celebrate his wife's recovery from an illness and I sat next to the Master of the Rolls.¹ He was dull and rather pompous, so I turned to the lady beyond who was what Felix would call a "star." She began by assuming that she had met me before; then had heard my name. Was I going into Parliament? A pity, for I had a clear voice. She always felt that *the* most important quality in a politician. Was I interested in metaphysics? Personally she

³ *Supra*, p. 77.

¹ Ernest Murray Pollock (1861–1936), Viscount Hanworth.

adored Kant. She thought people made too much of Bergson except that by his attack on reason, B. had proved that women were superior to men. Was I interested in sex? She knew a charming doctor in Wimpole Street who was able to trace back the weirdest experiences to sex-starvation. She herself had a very rich sexual nature and when in 1925 she began to drop soup-spoons a friend took her to this doctor. He said of course that it was *obvious* that her husband no longer satisfied her and she *must* for her own safety have a divorce. Her husband was *most* gallant and the judge warmly sympathised with her. Her husband gave her the beautiful chinchilla coat she had on as a parting gift. Now she had a *wonderful* husband who had decorated each of their six entertaining rooms in 'a different colour so that she had one for each mood. Was I married? Oh, that *was* too bad for she would have liked me to come for a really *intimate* talk, but she *never* invited wives of men to whom she felt sympathetic. It simply would not do. Wives so rarely understand Platonic friendships. Did I read Plato? He was too, too wonderful. Then Mrs. Churchill, to my deep chagrin, took the ladies out. Meanwhile, Frida, far away from me, was sitting with the lady's first husband. He indicated her and explained that she illustrated the kind of woman meant by Nietzsche when he said there were some women whom you could visit only with a whip. He had never hoped for freedom this side of the grave "until God in his infinite mercy" suggested that she visit a psychoanalyst. "Then she enabled me to transform a personal pleasure into a moral sacrifice." You can imagine the joy with which we exchanged notes on the way home. I expect you will have seen that we have a new Lord Chancellor.² He is both able and attractive; though he has something of the Old Bailey type of mind. The late Chancellor was a very sober and dignified person, but not, I think, first rate intellectually. He was a man of great courage for he sat for two years with the full knowledge that he was cutting short his own life.

You will like me to pass on the gossip, and very pleasant it is, about Leslie Scott. He has gone out to India as counsel to the Princes on a government enquiry and those not very amiable gentlemen, being most anxious not to lose any further indicia of sovereignty, are said to have marked the brief fifty thousand pounds with a hundred pounds a day refresher. I'm very glad; for Scott has had a thin time this last few years and this will certainly recoup his fortunes.

In the way of reading, my chief and quite unlimited joy has been the complete works, recently reprinted in two volumes, of Arthur Binstead, whom your London memories may enable you to recognise as "Pitcher" of *The Pink'Un*. They are *Gal's Gossip*, *Pitcher in Paradise*, et al. — quite

² On March 28 Sir Douglas Hogg, raised to the peerage as Baron Hailsham, succeeded Viscount Cave as Lord Chancellor.

wonderful reminiscences of the demi-monde and racing sets of the 'eighties and 'nineties. Birrell to whom I communicated my enthusiasm told me that he never wanted to meet anyone so badly as "Pitcher" and the latter would not because he never spoke to lawyers. But he once spent a weekend with Rosebery who was so tumultuously entertained that he had an inscription placed upon the seat that Pitcher occupied in his house. Of other things, a fine novel of the Russian Revolution called *The Land of the Children* and a very good detective story by Agatha Christie called *The Murder of Roger Ackroyd* which left me baffled and distraught until the end. You observe that I have taken life lightly. But I have also been to five committee meetings which needs a counterpoise.

Here I must stop for I have to pack and get my boat-train to Paris within an hour. Frida is already down in Sussex and I hope tomorrow to start a real intellectual adventure.

My love warmly to you both. *Ever affectionately yours, H. J. L.*

Washington, D. C., April 6, 1928

My dear Laski: You will get but a rotten reply to two good letters from you. I am very tired — I don't quite know why — partly, I suppose, the spring, which I always find hard here — and partly there has been almost no relaxation in my work during the recess, when you add in the letters and telegrams I had to answer after my birthday. I am tickled by what you tell me of Lord Sumner — I have seen other judges like that. I remember a son of Fitzjames Stephen who seemed to divide men into good and bad — and the bad were to be smacked. John Dickinson (author of *Administrative Justice and the Supremacy of Law* dedicated to Pound and Frankfurter) has sent to me a discourse *Working Theory of Sovereignty*¹ which respects you and criticises some of your views, careful, and I think perfectly correct to the point of obviousness. I infer from the inscription (MS) that he approves of *Kawananakoa v. Polyblank* — as who indeed that understands its limited scope, except your friend John M. Zane, does not — but he does not understand it I infer.

I think your answer to Sumner that his heroes knew what they wanted because they wanted only what they knew — an expression of their limitations — was admirable. I think I told you last summer that Ludwig's *Napoleon* didn't interest me because Napoleon did not, *i.e.*, in his view of life. By the by Ludwig was here — and made a short call on me — and later in the public prints, talking of those whom he had seen, used language that I should blush to repeat. He professed to think that I was It. Here the scepticism that Sumner regretted comes in handy. It shows

¹ 42 *Pol. Sci. Qu.* 524; 43 *id.* 32 (December 1927 and March 1928).

a simple nature to be capable of a really believing conceit. Beck, Brandeis thinks and I incline to believe, is innocently *naïf* — *non obstant* considerable intercourse with a hard and cynical world.

I have read almost nothing. I did read Demogue *Notions fondamentales du droit privé* — misled to it by words of Morris Cohen in an article — a most respectable 669 pages of print not too legible at night and not a damned word from start to finish that I don't know or disbelieve — no doubt a little profitable emphases here and there — but it enraged me and kept me some time from reading a type-written skeleton of Cohen's book, parts in print and not reproduced, parts not yet set up, which so far as I could judge is truly admirable. He does not lightly yield to popular superstitions — though he made me shudder and wonder by saying that he believes in Natural Rights — I trust that it was but a *façon de parler*.

I have got two or three dissents for Monday next that I care about — but one in which I stated my differences from McR. in a few words,² Brandeis has taken up and worked out with such a mass of precedent that I should think McR. would feel as if a steam roller had gone over him. He in turn dissents from one of my decisions³ as does Brandeis on other grounds and Butler — and I am not quite sure of my majority although not shaken. Also McR. keeps me waiting on his good pleasure to find out whether he will not change his vote (as we stupidly call it) where a change would leave me in a minority.

Meantime I have beautiful drives in the spring. Magnolias divine and today the cherry blossoms round the basin. So it is not all work.

Affly yours, O. W. H.

Washington, D. C., April 17, 1928 — Tuesday

My dear Laski: It is astonishingly hard to write down here — not that we have had a particularly hard lot of cases — rather the reverse — certainly so far as I am concerned — but the steady stream of *certioraris* seems to fill every crevice of promised leisure. A week ago I was more interested in delivering a dissent¹ of which I shall try to send you a copy tomorrow than in my judgments for the Court. I also dissented in another case in a few words — but Brandeis took the same theme up and put into his such a wealth of authority and such a lot of work that I should have been inclined simply to note my agreement with him had he not wanted me

² *Untermeyer v. Anderson*, 276 U.S. 440, 446. The issue concerned the retroactive application of gift tax provisions of the Revenue Act of 1924.

³ *Casey v. United States*, 276 U.S. 413 (Apr. 9, 1928); see *supra* p. 1027.

¹ *Black and White Taxi case*, *supra*, p. 1027.

to remain articulate.² But we are drawing near to the end of arguments — two or at most three weeks including the present one — I believe is all. Your yarns about the ladies with rich sexual natures — I think this is the second one — seem to me almost incredible. I find it hard not to suspect you of embroidering — but they make bully stories. I remember hearing of some dame who having a story to tell would ask — “Do you want it naked or will you have it clothed?”

I suppose you are back from Paris by this time — I envy you your excursions — and find it hard to believe that even little ones are at an end for me. My reason tells me that the fun can't last much longer — but it still is unabated and I don't encourage myself to dwell on the thought of *Finis*. Indeed yesterday I had a call from the prospective secretary of next year. When I have needed to enforce a little leisure on myself *ultra* the solitaire at 9 pm I latterly have taken up Disraeli's *Curiosities of Literature* which has been on my shelves uncut since I was a boy. I am inclined to add it to Pepys and Walpole's *Letters* as a good third when you don't want ideas and don't want to waste time. I just took up the Third Volume and have read a few pages at odd minutes now and then with much quiet pleasure. I have not your gusto over the printed word — but as I have told you am apt to read with a sigh and an eye to the number of pages. The other day Pound sent me the 4th edition of his *Outline of Lectures on Jurisprudence* — a prodigiously learned work — but I couldn't forbear saying to him that most of the authors that he cites, so far as I have read them, seem to me to write much drool for a few spoonsful of insight and that I doubted if most youngsters didn't get all the jurisprudence they needed if they studied law under a man with general ideas. Jurisprudence begins as soon as a man learns that the parcel-gilt goblet and sea-coal fire are not essentials of the alleged contract.

When the lamented Hough was alive and was chaffing a decision of mine to the effect that a boat of the U.S. was not guilty of a tort in running into another vessel — he said we don't talk of torts in Admiralty but of collision, and would I say that there had been no collision? — I wrote, alas just as he had died, that if he preferred to talk Basque instead of French and to deny himself the benefit of the wider generalizations of a more developed system it was all right but that having but one word for two ideas he must distinguish.³ Collision in the sense of physical impact of course is not denied — but collision with legal responsibility — I certainly should deny. Collision might mean either — and I rather think Hough really was the victim of his own ambiguity. If I have told you

² *Untermeyer v. Anderson*, *supra*, p. 1045.

³ See, *supra*, p. 601.

all this before forgive me. Old men forget — and most men repeat. But this was a case where a little more jurisprudence was needed.

Wed. 18th. This morning a letter from Wu (I have had two or three now) telling of inquiry from Austen Chamberlain via British consulate as to his whereabouts — on account of O.W.H. I thank Chamberlain via you. Wu seems troubled but does not give particulars — and his attitude is so adoring that it worries me. He wants to get a year over here and I believe Pound will offer him a scholarship though I doubt the wisdom of taking his hand from the plough. I should like to see him again before I die. I hope Paris was all you expected.

Ever affectionately yours, O. W. Holmes

Devon Lodge, 22.IV.28

My dear Justice: I came back yesterday from a divine fortnight in Paris — certainly the queen of all cities. I talked till I had no voice left; I bought books until I was footweary with mounting ladders; I went to two unforgettable plays; and I had one adorable ms adventure. Let me begin with the last first.

You will remember that the publisher of Diderot's *Encyclopedie* got weary, at the end, of ecclesiastical opposition, and, to the great man's disgust cut out all the parts of articles which might give offence to the Jesuits. It has always been a problem where the original articles have got to. Some thought they had just perished; others that there [*sic*] were bought by Catherine II when she purchased Diderot's library. At the *Bibliothèque Nationale* there is an exhibition about the Revolution. I saw there a letter about Diderot which interested me. The name of the man who had lent it meant nothing to me, but, on enquiry, I found that he was Diderot's great-great grandson. I got an introduction to him and discovered that he had all the papers, as well as hundreds of unpublished letters of Diderot and his friends. But he was passionately religious, and pretty well divided between pride and shame in his ancestry. He did not think he ought to publish and raise the dust of an old controversy. *M. le curé* too thought the papers had better remain dead. I saw *M. le curé* who spoke vividly on the decay of the true faith, the *sottises* of those wicked men, Voltaire and Rousseau, the horrors of the Revolution, just as though he and I were *émigrés* talking over the causes of the terror we had just escaped. At least I was able to put the librarians on the track; and they are hopeful that they will persuade the old gentleman to part with his treasures.¹

¹ The papers in question, owned in 1928 by Baron Jacques Le Vavas seur, a distant relative but not a direct descendant of Diderot, are now in the Archives Nationales; they are inventoried in Herbert Dieckmann's *Inventaire du fonds Vandeul et inédits de Diderot* (1951).

Then talk. I met Julien Benda, the author of *La trahison des clercs*, and had thoroughly enjoyable discussion of the growth of Bergsonism, and its disasters, the need to revive a faith in reason, the duty of defending Western civilisation. Then Thibaudet the critic, who said many fine things; of Bourget that he had shown how to make the ten commandments perfumed fiction for the drawing room; of Proust that he persuaded his readers that the infinitely little was infinitely important granted only that it was infinite enough; of Renan that his doubts were more powerful than the certainties of others; in every way an attractive personality. I met, too, Maurois, whose *Shelley* you may have read — a charming fellow, but quite obviously the man building his high-road to the academy and careful above all to see that there are no rocks in the way. And Mathiez, the historian of the Revolution, a great scholar, full of a great subject, and speaking of his material with a fire and enthusiasm that made one feel that there is no other subject save his. Of Taine, he said it was the finest autobiography in the French tongue; how curious that he should have chosen the French Revolution as the background of his narrative. He had a high regard for Mignet's old history, and a still higher regard for Acton; but he interested me enormously by saying that the work which had done most to give new impulses to the study of the Revolution in recent years was Kropotkin's *History* which, with grave faults and many inaccuracies, contained invaluable hints. He was a charming fellow, this Mathiez — the real *savant*, simple, unaffected, passionately sincere. As it was election-time I saw little of the politicians. But I went to lunch to the British embassy — a queerly artificial atmosphere — and met Briand there. Kellogg's note had just come,² and it was really amusing to watch the great man trying to convince himself that I was serious when I said that the note meant just what it said and that America was a pacifist people really believing that steps could be taken to prevent the recurrence of 1914. Really these politicians live in an unreal world. They exist by gossip, rumour, innuendo, suspicion; they have formulae, but not general ideas; perorations, but not serried argument. An hour of Morris Cohen's dialectic would reduce them to intellectual impotence. Give me the philosopher and the man of letters when you want to know whether the world is really moving!

The book-hunt was most profitable. New books apart, of which there were many I could not resist, I found Linguet's *Théorie des lois civiles*,

² The American Secretary of State, Frank B. Kellogg, had recently laid before the French government proposals for an international covenant for the outlawing of war. The negotiations which resulted ended in August with the signing of the General Pact for the renunciation of war. Laski wrote of "The Kellogg Plan and the European Powers" in 55 *New Republic* 143 (June 27, 1928).

which I think as powerful and more realistic than Montesquieu; a book curiously forgotten and rare, but about which I hope to make people really excited one day. I got a good number of the pamphlets on liberty of conscience published just after the revocation of the Edict, and one or two of the attacks on Louis XIV's despotism. I picked up on the quais *L'alambic des lois* one of the books to which Montesquieu gave birth,³ and quite good in its kind, the more interesting as it was the author's own copy and has an unpublished ms preface by him on the purpose of his work. Also I bought at ten cents each a perfect heap of *Mazarinades*, some deservedly famous, some hardly known, but all useful to me as illustrations of my pet theory about the difference between the English and French civil wars. One interested me much as in it the French are urged to grow a Cromwell as their liberator and to have done with kings. This is, I think, one of the very few republican pamphlets of that epoch. And I bought, finally, a set of pamphlets on the struggle between Maupeou and the Parlements in the 18th century which are excessively interesting from their attempt to show that France has a body of fundamental laws beyond the reach of the King's impious hands. I have a lot to say about that theory in my book on the 17th century. But apart from the things found you know and will share with me the delight of swinging the ladder to the fourth shelf from the top in order to see whether the inside of the red-bound volume is as good as it appears from the outside. I enjoyed so much, too, the talks with the *bouquinistes* and their explanation that the particular volume I wanted they had had in 1894 but since then * * * and a French shrug of the shoulders into which you must read the combined dramas of Racine and Corneille. One man was delicious. At first I could not examine his stock; then I bought one or two items from his catalogue and was allowed inside; two more purchases led me to the inner room; I then bought some twenty *Mazarinades* which led me to the *arcanum imperii* — a cellar — with the remark that I was then "*vraiment sérieux*." A dirty but delightful race these *bouquinistes*!

Well, I come back to much work, as term begins tomorrow, and letters, committees, articles to write, have all accumulated in my absence. But I feel astonishingly fit, and though there rankles in me a sense of irritation at not being able to get over to America — made more keen by your and Felix's letters — I register a vow that it shall be next year.

I send you my warm love to you both. Brandeis writes me with enthusiasm about some of your recent opinions.

Ever affectionately yours, H. J. L.

³ Auguste Rouillé d'Orfeuil was the author of *L'Alambic des loix, ou observations de l'ami des françois sur l'homme et sur les loix* (1773).

Devon Lodge, 29.IV.28

My dear Justice: I am so glad your mind has been relieved about Wu, and gladder still to know that he is all right. I enclose the Foreign Office letter which shows that their job was properly done. I hope Pound can give him a year at Harvard.

I was deeply interested in your taxi-cab case,¹ and, if I may say so, I thought your view demonstrably right. At the back of Butler, J's opinion there seems to me to linger a quite patent fallacy, namely that there is a body of common law dogmas to which, albeit unconsciously, state-jurisprudence is seeking to conform; that where this is traversed, it must be assumed, *exceptis excipiendis*, that it has been done in error. It is the same fallacy which seeks to assume that a state unconsciously adopts the dogmas of international law, and that municipal jurisprudence is adapted thereto. But surely on the nature of the case, granted (a) the character of American state-sovereignty and (b) the position of a state supreme court, one cannot logically escape the conclusion that the common law is for that state what that state chooses to make it mean, so long as the federal constitution remains unviolated.

I have had a busy week, it being the beginning of term; and the room for play has been small. On Friday we managed to smuggle in a dinner for Herbert Croly, to which Graham Wallas and Allyn Young came; and we talked the universe round. I like Croly, but I must say he seems to me heavy and immovable; and there is about him a queer streak of religiosity I don't understand. Wallas is a dear; but if God ever made a more self-centred man, I have not met him. One sentence in his talk stands out in my memory, an insistence that no one had "put psychology in its proper perspective between Aristotle and my *Human Nature in Politics*." I wanted so badly to put in just a little plea for Hobbes, out of courtesy, at the least, to the illustrious dead. But Frida held my eye, and I remained an exquisitely polite host. Young is fine. He has immense learning, great practical insight, and a sense of humour. I hope you will meet him if and when he returns to America.

Of reading, a good deal. I am sending you separately a book that has enchanted it — the sequel to Bentham's *Fragment*.² The editing and the introduction might have been better done — but the text, I think, is Jeremy at his best and most characteristic. But only think what Lytton

¹ See *supra*, p. 1027.

² A *Comment on the Commentaries* (Everett, ed., 1928) was never published by Bentham, although his *Fragment on Government* (1776) was an extracted portion of the *Comment*. Laski reviewed the *Comment* in 18 *Manchester Guardian Weekly* 458 (June 8, 1928).

Strachey, or Sainte-Beuve would have made of that love story.³ Then the collected papers of George Unwin,⁴ which Tawney has printed with an admirable introduction. Unwin was one of the very best economic historians of our time; and some of these papers have a quality that I do not think Maitland would have disowned. I hope they will come your way in the summer; and at least I hope you will read the memoir and the two or three papers at the end.

I must not forget to tell you that at a lecture on Friday by Sarfatti, the Italian jurist,⁵ I saw F. Pollock for the first time in many a day. He looked astonishingly well, and his remarks on men and things were pungent. Indeed he looked more like a man of sixty-five than one who has passed into his eighties. And he had read all the latest books and knew all the latest gossip in quite astonishing fashion. And I saw Nevinson, who had just come back from Palestine, full of enthusiasm for Mahomet on the ground that a man who could organise so shiftily and dirty a race as the Arabs into fighting material must have been a very great man. Nevinson is wonderful. A book has just been published attacking the Dardanelles campaign and its management. Nevinson, to whom each item of that struggle is holy, was bursting with anger, and he used adjectives which would have made a lady from Billingsgate [*sic*] tremble with envy against the author. I must not omit his story of the soldier who wrote from Palestine to his mother in a Lancashire cotton-town. "I am now in the land where our Lord was born. There are no movies and no football, and it's very hard to get a drink. If I stay here long I shall have to turn religious, too." Isn't there something of really epic quality in that *too*?

One other book I must eagerly recommend — by an American named Margaret Wilson, *Daughters of India*. I admired it greatly; and people who have been long there, like Ratcliffe⁶ and Lord Meston,⁷ tell me that

³ Mr. Everett's preface to the *Comment on the Commentaries* told, for the first time, of Bentham's early love for Miss Dunkly — a love which led him to write the *Comment* in order that he might support a wife. That he never published the *Comment* may suggest that his passion for Miss Dunkly cooled, or that her judgment told her that her greatest happiness was to be found elsewhere than by his side.

⁴ George Unwin (1870–1925), Professor of Economic History at the University of Manchester; author of *Studies in Economic History* (R. H. Tawney, ed., 1927).

⁵ Mario Sarfatti was Professor of Comparative English-Italian Law at the University of Turin.

⁶ S. K. Ratcliffe (1868–), journalist and lecturer, had spent some years as newspaper man in Calcutta.

⁷ James Scorgie Meston (1865–1943), Baron Meston, filled many posts in the government of India from 1902 to 1919; author of *Nationhood for India* (1931).

as a picture of the real Indian atmosphere it is quite unsurpassed. I think that Harcourt publishes it in New York. And other books come to my mind on which I have been feasting. Did I ever mention to you, Sanlaville, *Molière et le droit*? It is a charming discussion of the lawyers in Molière's plays, and their relation to the actual lawyers of the 17th century. I enjoyed it hugely. I read, too, a study of Saint-Simon the diarist by Doumic, which had very great charm. I don't know if I ever said to you that this constant research on the 17th century has sent up Saint-Simon enormously in my opinion. He was one of the few who knew what the disease was. I have been working this last three weeks at the economic side of L. XIV's reign; I find that it cost 50% of the product to collect the taxes, and that an average peasant paid over sixty per cent of his income in taxation. So that the revolution is so inevitable that I am sure the effective central problem is why it was postponed so long. I wonder how far Anglo-French rivalry kept alive a national spirit which disappeared when peace gave the prospect of civil discord. But this is a mere *ballon d'essai* without much thought behind it.

I write on a perfect spring morning in the heart of London. And behind me on a small rose tree Frida planted to make the garage less human, a blackbird sings quite enchantingly; and by my feet the cat looks at me in agony because the window is closed at the top and she cannot interfere with the singing.

Our love to you both.

Ever affectionately yours, H. J. L.

Devon Lodge, 8.V.28

My dear Justice: A week of literally overwhelming work, in which I have emerged half-drowned from a mass of committees, lectures, dinners, and book-reviews. To me the most interesting experience was giving a lecture on the radio. To speak to an unlimited audience in an empty room and know that the machine conveys the slightest inflection of the voice over the habitable globe is really weird. I believe it came off rather well. And at least from the innumerable letters I have received asking for literature about my subject I became convinced that it is a good way of getting people to read.

Of dinners, the most interesting was one given by Sankey. Haldane and Tawney were the other guests and we discussed the judge and his function for hours. I was astonished to find that whereas Sankey took the obvious and sensible view that judges inevitably legislate, even if it is what you have called "interstitial legislation," Haldane was insistent that they merely "declare" what is already law, and not the combined efforts of all of us could move him from that. It was amusing, too, to find how completely he and Sankey disagreed in their estimates of particular

judges. Haldane seemed to look for what I may call a "man of the world" quality in their decisions; Sankey was more interested in the endeavour to make the case emit a big, working principle. Then we gave, at the School, a jolly dinner to Harrison Moore, the Australian judge.¹ He is quite charming, with none of the *longueurs* from which I have suffered in Felix's hero, Higgins, J. and he told us some excellent stories, especially one of X, now a judge of the High Court, who spoke for three days; his junior then resumed his points in an hour; and Griffith, C.J.² asked blandly, "Mr. X, are you and your junior animadverting upon the same theme?" We had also Franz Oppenheimer,³ the German economist, to dinner. He was a real delight, and his admiration for you and Felix and Redlich went to my heart. He told us an excellent tale of Kohler — Pound's omniscient hero — writing a paper on Ancient Chinese Law with the aid of a Chinaman, to translate the texts; and an even better one of Mommsen's remark on hearing of the appointment of Max Müller⁴ to Oxford: "Have you then no humbugs in your own country, that you must import them from Germany?" Isn't that admirable?

In the way of reading, I have thoroughly enjoyed the fifth volume of Carlyle's *Medieval Political Theory*. It deals with the 13th and 14th centuries, and though no one could call it a great book, it is full of *aperçus* and opens up vistas I thought very suggestive. Then Chafee sent me his new book,⁵ and though bits of it seemed to me not worth reprinting, I thought it left a very charming impression of a mind at once liberal and distinguished; though I add that he makes the common error in the article on judges of thinking that the economic interpretation of history deals with individual motives. I do wish people would read the texts on which they comment. Then, too, an old but admirable book on French literature in the 18th century by Paul Albert.⁶ If it is in the Boston Athenaeum I hope you will take it to Beverly Farms; for the essays on Saint-Pierre, Voltaire, and Rousseau are really as good as anything I know, and it is pleasant to see a Frenchman free of the childish superstition that the 17th century is better than the 18th. And an equally ex-

¹ The reference is probably to Sir William Harrison Moore (1867-1935), who left England in 1892 to become Professor Dean in the Law School of the University of Melbourne, where he became a leading authority on constitutional matters and published his work on *The Constitution of the Commonwealth of Australia* (1902). He represented Australia in the League of Nations Assembly in 1927, 1928, and 1929.

² Sir Samuel Walker Griffith (1845-1920), Chief Justice of the High Court of Australia, 1903-1919.

³ Franz Oppenheimer (1864-1943), prolific writer on economics and sociology who left Germany in 1940 and died in the United States.

⁴ See, *supra*, p. 889.

⁵ Zechariah Chafee, Jr., *The Inquiring Mind* (1928).

⁶ *La littérature française au XVIII^e siècle* (1874).

cellent book on feudalism (*La société féodale*) by J. Calmette which is a brilliant *résumé* of the research of the last thirty years.

Queer things, too, have come in between. One of my students quarrels with his guardian; said guardian tells him to leave the house and never come back. Student does so. Guardian then calls me up to ask for aid in the return of student. Laski searches for student who refused to go home without an apology from guardian; Interview between them here which is an education in the art of invective. Student then offers to apologise to guardian if guardian will apologise to him. Guardian says he cannot apologise to student but will apologise to me. Entrance of hysterical wife of guardian to insist that Christians must forgive and forget. I nearly explode the settlement by dissolution in laughter. Hysterical wife stands chanting that "because of the war we must love: I love Professor Laski and he loves me. Do you not love me Professor?" This in a high-pitched scream which must have thrilled our neighbours. The curtain is then rung down on a quite touching scene in which guardian and student combine to impress upon me that it is all the fault of the hysterical aunt who is incapable of loving anyone. Add to which an Indian student who tells me that he feels very tempted by the lovely ladies of Leicester Square and seeks a remedy against their charms. "I have called on my Gods, but they answer not; I have asked my chemist for a philtre which would repress my desires, but he knows not one; I come to you as to my father for aid." Don't you think, in all honesty, that the work of a judge is simplicity itself beside that of a professor? Or do you take judicial notice of philtres?

My love to you both.

Ever yours affectionately, H. J. L.

Washington, D. C., May 12, 1928

My dear Laski: It may be that age makes it harder, it may be the endless stream of *certioraris* — but I have found my work making it impossible for me to write as often as I should like to. I should be very sorry if it led to my hearing less often from you. However, the Conference this afternoon that left me tired left me pretty well cleaned up — two opinions¹ and three dissents² to be delivered next Monday and nothing undone except the delivery of one 5 to 4 opinion which McReynolds, one of the 5, held up at the last minute, two months or more ago, and keeps me waiting on his lordly pleasure.³ He does not share the opinion of some of

¹ *Ferry v. Ramsey*, 277 U.S. 88; *Larson Co. v. Wrigley Co.*, *id.* 97 (May 14, 1928).

² *Long v. Rockwood*, 277 U.S. 142, 148; *Springer v. Philippine Islands*, *id.* 189, 209; *Panhandle Oil v. Knox*, *id.* 218, 222.

³ Not identified; see, *supra*, p. 1045.

us that the work of the justices has the right of way and should be considered before looking out for No. 1. He has me in his hand as it depends on him whether what I wrote goes as the judgment of the Court. There seems a preestablished harmony between Brandeis and me. He agrees with all my dissents and I agree with the only one that he will propound.⁴ There has been a succession of superlatively beautiful things here — each being an event, beginning with the magnolias — but nature, jealous of allowing us the superlative degree, takes the life out of me, at least, in the spring weather so that I take a somewhat languid joy.

I have read almost nothing — W. Lippman's little book of course — *American Inquisitors*. His writing is fly paper to me — if I touch it I am stuck till I finish it. He writes so well — and sees so much that it is difficult to put into words — I think he talks as wisely as possible about our fundamentalism and modernism. My wife has read to me (*pendente solitaire*) a good part of Mark Sullivan's book — *Our Times* — a deuced clever evocation of the past that I remember — and most of which you do. Also books of flyers and one that Miss Gertrude Bell was to have written an introduction for — had she not died — *The Marsh Arab* or some such name. Incidentally, not for the first time, am I struck by the courage of an Englishman going alone among a lot of savages that would have liked to kill him. I suppose that in that and other similar cases there is a good deal of confidence in the power of the name of England, but there is a lot of courage too.

Your adventures in Paris were most interesting. Not for the first time does your talk with Mathiez the historian of the Revolution suggest that one should read Kropotkin — I never did — but Brandeis once told me suggestive things from him. Your names are sometimes illegible — who wrote the *Théorie des lois civiles* which makes me prick up my ears?⁵ And what is your theory of the difference between the French and English civil wars? Dear me, how many things I want to ask or talk about — and I long to see your book on the 17th century — but I agree with Frankfurter who says he urged you not to hurry. Your *Grammar* seemed hurriedly written. You have much to tell but only a thing well told lasts, and you have shown often enough that you can tell your story well. What you say about Croly agrees with the little I have seen of him — and what you tell of Wallas somewhat surprises and much amuses me. I look forward to Bentham's *Fragment*, and wish I could think of things that you would like. For want of other things I may venture to dispatch one or two more dissents. I have told you I think that my last letter from Wu spoke as if his life was in danger — I can't tell how seriously to take it but it makes

⁴ *King Manufacturing Co. v. Augusta*, 277 U.S. 100, 115 (May 14, 1928).

⁵ *Supra*, p. 1048.

me uneasy. I begin to hope he will take the year's scholarship that I believe Pound has offered him. I must stop. I am a pretty tired old cove — but as ever

Affectionately yours, O. W. Holmes

Devon Lodge, 22.V.28

My dear Justice: I cannot complain of being underworked; for during the last fortnight I have had, I think, only two free days and those had to be devoted to necessary writing. However, half the term has gone, and the slow approach of three months' freedom is inviting beyond words.

One or two things will, I think, amuse you. Since I began giving these lectures on the radio, I have had the queerest collection of letters ever sent to a human being. One man writes to say that his drains are out of order (drains not brains); could I advise him how to put them right to the best social advantage. Another tells me that the Court of Chancery is illegally detaining twelve million pounds; would I take up his case? Another still simply thinks "I may like to know" that in his opinion no honest man has ever been a member of Parliament. A lady tells me that her son, aged eleven, has a genius for politics ("He already made speeches to the local Primrose League"); what training do I think most suitable for ultimate membership of the Cabinet? A gentleman writes from Germany to say that he thinks we ought to correspond for I am clearly a kindred soul and will I please start by sending him everything I have written with affectionate (*vom Herzen*) autograph inscriptions. Do you remember the man who wired to Huxley — "Have discovered the truth; shall I come over?" I have been going through a series of similar adventures.

We have not been about much, for I have been too busy. But on Sunday we took the day off and motored down to Hampshire to see the Webbs. We had a delightful time there. They told us endless stories of Bernard Shaw which explained much about him. Today, it appears, he is so uncomfortable in the presence of poor people that he mingles only with millionaires; which shows how little he is capable in an ultimate way of manners. He now takes violent likes to people — the last being to T. E. Lawrence of Arabian fame. He actually wrote to Balfour suggesting that Lawrence should be given a pension of £1000 a year by the government; to which Balfour replied that the government had no funds for endowment of that kind but would welcome such or similar action on the part of Mr. Shaw. Webb told me that in his view all Shaw's antics are really the product of an inferiority complex; and I think this is not unlikely. The Webbs together are really delightful people — humble, open-minded, interested in all ideas, and endlessly kind to young people.

Of books, as Mr. Pepys would say, I have read a-many. First Shaw's

vast treatise on socialism which I had to review.¹ It is strikingly written but he has no idea of what has happened to economic or political theory in these last forty years. Then Wells's little confession of faith,² which is mainly rhetoric but, I think, very moving rhetoric. Then Gibbon — the last part — for a paper to a students club; and with a new admiration greater than I have ever before experienced — its solidity, its pageantry, its economy of words, its ironic note are all magnificent. How the man of the autobiography came to write it, I literally do not understand. Then Russell's *Philosophy* which I hope you will earmark for Beverly Farms — a truly remarkable book, in which I note in passing a criticism of Bradley which is masterly. Not everyone can annihilate absolute idealism in two pages! And the new volume of Carlyle's medieval political theory which has solid virtues but is quite totally devoid of any personality at all. Last, but, God knows, not least, a volume of P. G. Wodehouse called *The Clicking of Cuthbert* which I beg you to buy. I laughed till my sides ached; and the first story of all would, on my vote, go into any collection of classical humour. He is the Chaplin of letters.

I haven't had time to buy very much; but I picked up a nice collection of Fronde pamphlets, and Carleton's *Regall Jurisdiction* which pleased me. Also a copy of Bellarmine's *De Romano Pontifice* elaborately bound circa 1700 in a tooled morocco binding, which proved [*sic*] a past owner, the Rev. Edward Powys, to write on the margin in 1784, "Tis pity that such ignoble poison should be so nobly preserved." Men, as you see, took their faiths soberly in those days.

We have had Croly to dinner — a questioner but not a contributor — and Abraham Flexner who is as delightful as he is dogmatic. And I went to Allyn Young's to meet the German economist, Schumpeter³ and was overwhelmed. He has Felix's charm and brilliance, together with a power of analysis that is staggering. His picture of the weakness of German politics was as superb a conversational *tour de force* as I have ever heard. If he goes to America again I shall certainly send him to see you; I was quite literally entranced by him. Flexner, by the way, confirmed all my suspicions about such foundations as those of Rockefeller. He has in his mind a "pattern" of what a university institution ought to be; and he judges any particular university by the degree of its conformity with the

¹ Laski reviewed *The Intelligent Woman's Guide to Socialism* (1928) in 4 *Saturday Review of Literature* 981 (June 23, 1928). See, *infra*, p. 1059, note 3.

² Probably H. G. Wells, *Open Conspiracy; Blue Prints for a World Revolution* (1928).

³ Joseph Alois Schumpeter (1883-1950), whose career in economics began in Austria, took him to a Professorship in Germany, at Bonn, from 1925 to 1932, and then brought him to the United States, where he became Professor of Economics at Harvard in 1932.

pattern. He made, however, one admirable remark. He pointed out that in the nineteenth century, when scientific discovery, political change, artistic evolution, were all on a Titanic scale the movements which deeply impressed Oxford were without exception theological in character — Newman, the admission of Nonconformists and so forth. That is, I think, true, and worth while trying to explain. I think probably the reason lies in a kind of intellectual in-breeding that is fatal to a proper appreciation of novelty. You see something of the same thing in Harvard in the period before Langdell and in English Cambridge before they were shaken up by Clerk-Maxwell.

I am longing for American news; neither from you nor Felix have I heard for over a month. Did I, by the way, tell you that the University of Geneva has asked me to give half a dozen lectures there next February. I am very glad about it, as with the spoils I think it is pretty certain that I shall be able to get to Washington in March.

Our love as always to you both. *Ever affectionately yours, H. J. L.*

Devon Lodge, 28.V.28

My dear Justice: A perfectly delightful letter from you warmed my heart. I don't think that you or Felix need worry about the French book being completed too quickly. So far, I have been gathering its material for the last three years, and I haven't yet put pen to paper. I plan to get out the first volume sometime in 1930; as to the others, they may take until the year I retire. But when they *are* done, I hope that people will have a new view of the movement of the European mind in the 18th century.

I have had a jolly week. Last Wednesday I had the annual dinner of my department, to which 4 young Tory M.P.'s came as the guests. We wrangled happily for three hours. I was intensely interested by their enthusiasm for Winston and their contempt for Birkenhead. And in their affections the more extreme a Labour M.P. was, the more they seemed to like him. But what moved me much was their genuine and deep concern about the lives of the working-class. I don't know, of course, how far they could be taken as in any way representative; but, as I said to Tawney, so far as people like themselves are concerned they differ much more about the rate of change than about the direction in which change ought to go.

Yesterday we motored Nevinson out into the country for the day and had, as you can imagine, a most delightful time with him. I was complaining of Wallas's self-centredness and said this was new. "Oh no!" said Nevinson, "he had it at Shrewsbury when we were at school together. He always represented his chance thoughts as direct communications from the Holy Ghost." He told me a wonderful story of Bridges, the poet laureat, landing in New York and refusing to be interviewed. Next day

the headline in the papers was "King's canary refuses to chirp." Isn't that superb? Then he refought the Dardanelles campaign with Ian Hamilton¹ where we stopped for tea; and I was more moved than I can easily tell you by the spectacle of these two trying twelve years after the event, to think out alternatives which might have meant success. Nevinson has nearly finished a volume about his latest wanderings;² if it is as good as the earlier you shall have it forthwith when it appears in September.

These things apart I have been working steadily in brilliant weather. I have reviewed Bernard Shaw's book on socialism³ — teeth so concealed as, I hope, to make the bile more bitter. He's a first-rate stylist, but he hasn't read a book for thirty years and seems not to understand that changes in social organisation mean changes in economic principle. Moreover for a man to tell you that the desirable thing is equality of income, without telling you how to get it is simply irritating. Then I have been writing a long paper on the general will for a symposium in July at the Aristotelian Society⁴ and I am less discontented than usual with the result. For I have worked out a thesis about the general will in Rousseau which resolves the contradictions usually discussed between the second *Discours* and the *Social Contract*. It is a pretty point and I shall look forward to hearing what you think of it later. And I have got some pretty results from assuming that in politics good means the satisfaction of demands and working out the consequence of a modified utilitarianism along those lines. All of which reminds me to beg you, when leisure comes, to read two simply masterly essays of McTaggart in *Studies in Hegelian Cosmology*. One is called "Is the State an Organism" and the other "The Supreme Good and Pleasure as a Criterion." I think that I have never read discussion in that line since Hume in which destructive power was so perfectly at work. My little advanced seminar has been thrilled by reading and discussing them.

I apologise for my writing.⁵ The man who said (1767) "*L'Esprit des Lois c'est la Propriété*" was Linguet a journalist-lawyer who was guillotined in the terror. A quite wonderful fellow — a combination of Marx and de Maistre. There's a good account of his earlier period in a very pleasant book by one Cruppi called *Un avocat journaliste au XVIII^e siècle*.

I am sorry you are being driven so hard on the Court. But it will com-

¹ General Sir Ian Hamilton (1853-1947) commanded the Mediterranean Expeditionary Force in 1915; author of *Gallipoli Diary* (1920).

² *Last Changes, Last Chances* (1928).

³ Laski reviewed *The Intelligent Woman's Guide to Socialism* (1928) in *The Labour Magazine* 67 (June 1928). See, *supra*, p. 1057, note 1.

⁴ *Mind, Matter and Purpose* (Aristotelian Society, Supplementary Volume VIII, 1928), 45.

⁵ *Supra*, p. 1055.

fort you to know that Brandeis in a note to me last week said that he "does not know what he would do without you there." I hope you will send me anything you write of special note, for, otherwise, I do not see them until the printed volume appears.

I must not forget to say that returning last night in the car I heard my first nightingale. I was disappointed beyond words. There is something harsh in its note, which has little of the liquid sweetness of the thrush. Nevins disapproves, and he is a real swell on birds, so that I am probably wrong. But as I listened I felt that I would like to annotate Keats with quite unexpected adjectives.

You note that I say nought of books bought or read. I have bought none. But I am reading with immense interest Rostovsev's (or some such spelling) *History of the Ancient World* — one volume the ancient East and Greece, one volume Rome, and superbly illustrated. There's a great holiday book for you. I got really worked up over its picture of Assyria and Babylonia, even to the point of looking out places on a map.

My love to you both. I write while Frida is motoring to Devon.

Ever affectionately yours, H. J. L.

Beverly Farms, June 12, 1928

My dear Laski: There seems to be undue delay in the post. The last letter from you is dated 28.V. To be sure it may have waited a day or two for my arrival last night. You ought to have received two or three of the little dissents that I scattered more copiously than I could wish this last term. But the Court has rendered some decisions that I deeply regret. Brandeis and I are together as we are so apt to be, by a sort of pre-established harmony. However it is over now and I am beginning to conceive the possibility of relaxation. Following your suggestion, which I should not have needed if I had known of the book I bought Russell's *Philosophy* — and following an older one of last year that I attributed to you I have bought Parrington's *The Colonial Mind*.¹ The something illegible of Cuthbert² had not reached these shores but is ordered, I believe. I wish I had kept a list of your recommendations as they came along — but some were off the beat to which in a general way I confine myself. While at the Touraine I read *Genghis Khan* — (by Harold Lamb) — an interesting picture of what a man can do with a moderate force that can get there quicker than the other feller. I was a little interested too by his indifference to life — at least to the life of other people — by way of antithesis to our sentimentalism. I am rather hard-hearted in theory and

¹ The first volume of Parrington's *Main Currents in American Thought* (1927-30).

² Wodehouse, *The Clicking of Cuthbert* (1928), *supra*, p. 1057.

deal imaginary death more easily than I should find easy in the real case.

Yesterday morning before coming here I was taken over to the Gillette Safety Razor factory and was greatly impressed. You are familiar I suppose with the mechanism of modern great establishments. I am a child in most matters of practical business. Perhaps because I was a friend of Brandeis who used to be Gillette's counsel, I was presented with a parcel on leaving which flabbergasted me when I opened it. It was such a complete and pretty outfit of safety razor, blades, soap and brush in finest form. As yet I just own it as a miser, but in a day or two I shall begin to use it and cakes of soap will seem bristly compared with my face — a new comfort has set in, since in last September my secretary bought a safety razor and blade in a 10 cent store and gave them to me. I am as converted as St. Paul — which reminds me — did I mention the seeming revivification, with reenforced arguments, of the notion that Jesus was a myth? It really sounds very plausible. To one who concludes from reading the story that one knows nothing certain of the sayings or character of Christ it doesn't much matter whether there was or was not a centre of radiant energy in the form of a man. Does it occur to you that there are more modern things in the *Bible* than in other ancient literature. I think "Father forgive them — they know not what they do" — beats all the classics. Think of those words being attributed to the supposed author of doctrine absolutely irreconcilable with such skeptic tolerance. Also "a thousand years are as a day in thy sight" — as embodying the possibility of the same period being an instant or an eternity according to the state of mind. It seems as if vacation had begun.

Affectionately yours, O. W. Holmes

Devon Lodge, 3.VI.28

My dear Justice: I discovered to my horror yesterday that my secretary had forgotten to send you the Bentham. I am so sorry, for you may have been bothered by the thought that it has gone astray. However, it is now in the post; and I am sending you, too, an article of Max Beerbohm's on Andrew Lang which seems to me one of the most delicate pieces of malice I have ever read.¹ And as I think you share my dislike of Lang it will, I hope, give you peculiar pleasure.

I was enormously interested in the three dissents you sent me, above all in the *Springer* case.² I can't even begin to understand the process by

¹ Max Beerbohm "Two Glimpses of Andrew Lang," 1 *Life and Letters* 1 (June 1928).

² In the *Springer* case, *supra*, p. 1054, Sutherland, J., for a majority had held that the Organic Act of the Philippines included principles of the separation of powers and that the legislature of the Philippines therefore could not im-

which Sutherland got a majority on his side. And in the others I would much like to know why our brother McReynolds thought it necessary to add notes which are both insubstantial and inelegant.³

This has been a most pleasant week. First of all it has been one long burst of sunshine and Frida's little garden, which stands just outside my study window, has been one mass of flowers. Then two of my students have won prize fellowships, and I feel like a duckling who sees her brood take to the water. Then, in a way most remarkable of all, my blind student, one Whitfield was given the Ph.D. for his thesis on Mably,⁴ and to have his courage in undertaking it and his endurance in completing it crowned with a *summa cum laude* goes to my heart. Every word of the material he used had to be read to him, noted by him on to a Braille machine, and then re-made into the book by the Braille notes. If you think that he could never "page" a book, and realise what it meant to recover a lost reference you get a sense of his courage. I ought to add his wife's too, for she read every word to him of the countless books and mss he had to go through. Doesn't that make you feel better about your kind?

I hope you will get the June number of *Harper's Magazine* and read an article of mine on the American political system.⁵ I ought of course to have sent it to you; but they sent me only one copy, and it does not appear procurable over here. I badly want to know how much dissent it provokes in you and Felix. I told the Harvard people to send you my piece on Constructive Contempt. That is, I know, sensible and I am confident of your approval even before it appears.

We had one jolly dinner this week — Allyn Young the economist, Eileen Power the historian, and Brinton,⁶ a young Harvard professor who in days gone by was a pupil of mine. We got on to the problem of national decay. Brinton propounding, with modified support from Young, the old thesis of maturity and old age in every people. I denied it; and argued that all such biological analogies are a betrayal of science and that when you look at a nation in decline there are always causes of a non-biological kind at work. You can't *e.g.* say that biology explains the decline of Greece and Rome. In the first you can put your finger, as in the second,

pose executive duties on legislators. In his dissent Holmes emphasized the difficulty in discovering sharp lines between the legislative and the judicial powers of government.

³ This refers, perhaps, to the fact that McReynolds, J., wrote a brief dissent from the Court's judgment in the *Panhandle Oil* case, *supra*, p. 1054.

⁴ Laski contributed an Introduction to Ernest A. Whitfield's *Gabriel Bonnot de Mably* (1930).

⁵ "The American Political System," 157 *Harper's Magazine* 20 (June 1928).

⁶ Crane Brinton (1898—), now Professor of History at Harvard, had been an undergraduate at Harvard College when Laski was on its faculty.

on a body of specific economic and political causes which have nothing whatever to do with the quality of a national stock. Then we got on to the effect of Oxford on Rhodes scholars and Brinton who was one of them told us that they are in general disappointed with Oxford and disappointing in their achievement after their return. He interested me greatly in his analysis of Oxford. He said that the average American was horrified by its preciousness, by the free and easy habits of the undergraduates, and especially by their intellectual and moral irreverence. I argued that these were exactly the qualities there ought to be, especially the last, among the youth of a university, that *e.g.* at 18 art for art's sake is a phase as normal as measles in a school-child and that irreverence at twenty connotes a prospect of choosing your own gods that is quite fundamental. But Brinton was I think even more horrified by my approval than by the habits of which I approved. Then he started on a eulogy of Ludwig, the German biographer. I said I thought him much overrated and disliked this psychological analysis which entitled the biographer to show more knowledge say of Napoleon or Christ than either had of himself or his contemporaries of him, especially as the material was always a body of inferences unsupported by documents *e.g.* it led Ludwig to accept the St. Helena legend of Napoleon as the man of peace quite uncritically when Elba ought to have made him see that Napoleon made his legend because you cannot get ready to escape from St. Helena. Similarly the *Life of Christ* seemed to me ignorant and cheap, a history of how Ludwig would have felt if he had been Christ without regard to the problem of squaring his private feelings with the most complicated and dubious body of documents in the world. Brinton argued that even if this was all true, still Ludwig made people interested in history, at which I leave it.

Of other things, a dinner with Mackinnon, J. was interesting — he is an attractive person with a quiet scholarly flavour and his colleague Maugham, J. who has written a pleasant book on the Calas tragedy⁷ was charming. The latter told a good story of Jessel who said of his colleagues that it was quite untrue to say that seven of them didn't know a legal principle when they saw one; that was only the case with five, and of these, four were Chancery judges. He told also a charming tale of Davey helping on a junior by attributing to him an argument of which he (Davey) happened to be particularly the proud author, and Jessel's com-

⁷Frederic Herbert Maugham (1866–), Baron Maugham, was Judge of the Chancery Division of the High Court from 1928 to 1934, later becoming a Lord Justice of Appeal and Lord of Appeal in Ordinary and, in 1938, Lord Chancellor. His book, *The Case of Jean Calas* (1928), was concerned with the trial of Jean Calas (1698–1762), who was executed for having murdered his son. The murder was committed to prevent the son from becoming a Roman Catholic.

ment, "Well, of course he is young and no one can be expected to understand equity until he is forty." Also a story of B. B. Rogers,⁸ the translator of Aristophanes, bringing in a quotation from the Greek text into an argument. Jessel glared and snapped out, "We can't have your domestic pets in my Court, Mr. Rogers."

I have read little and bought less. But I do urge you to read *The Semi-Detached House* by Emily Eden — a recovered novel of the 'forties with, I think, certain quaint enchantments about it. I have been reading for review the second volume of Curzon's *Life* and finding him even more intolerable than I feared.

Our love to you both.

Ever affectionately yours, H. J. L.

Devon Lodge, 16.VI.28

My dear Justice: As I write there sits facing me an admirable snapshot of you and Brandeis which Felix sent me from some paper; it's a perfect joy to me for it makes you look so well. I hope the summer in Beverly Farms (to which I am sending this) is going to be all you can desire.

I am full of work just now, buried beneath a mass of examination papers. And dull work it is since, to take the last set, there are four people whose papers were worth reading; and when you have had your remarks regurgitated to you for the fiftieth time, you begin to wonder whether it was really worth while to have made them. But this, I expect, is the special disease of end-of-term; and when next Friday comes and I know that for three months I need not give another lecture, life will take on a different hue.

The last fortnight has been full of queer experiences. I spent a day with Mrs. Asquith who talked brilliantly if maliciously about the good and the great and told me one remark of Balfour's about Lloyd-George which deserves permanence; "Even his dishonesties are irrelevant." I went, too, to hear the debate on the prayer-book in the House of Commons and marvelled alike at the continued strength of sheerly vulgar anti-Romanism and the passion which a faith in the magic of sacramentalism can still inspire. I went, also, to a dinner to commemorate Graham Wallas's seventieth birthday where he made a speech more unconsciously egoistic (and therefore quite charming) than any other I have ever heard. Its keynote was that in ancient Greece this [*sic*] was the influence of Plato and Aristotle; have I, G.W., too kept the faith? I was amused that Sir Herbert Samuel, who spoke after me, said, clearly intending a compliment, that anyone who could "speak so eloquently as Prof. Laski" had

⁸ Benjamin Bickley Rogers (1828-1919); successful barrister and distinguished translator of Aristophanes.

a duty to go into the higher walk of the House of Commons. An interesting essay could be written on the politician's assumption of superiority. I wish you could have heard Samuel explaining to Gooch, the greatest living authority on the subject, the origins of the war, as though because S. was in the Cabinet when it broke out his views were necessarily final. Then, too, a jolly dinner with Allyn Young to meet Elton Mayo,¹ who does research at Harvard into industrial physiology and is, I should judge, as sane and scientific a mind as has ever dwelt in those difficult realms. And yesterday, Frida being away on holiday, I had Birrell to supper, and we talked books till the small hours. He interested me by insisting that Emily Brontë was the greatest genius of all who dealt in fiction in the nineteenth century — a view I cannot understand — and expressing contempt for Mrs. Gaskell whose *North and South* and *Mary Barton* seem to me big achievements. We agreed in thinking that the equation $Gosse = 0$ is an essential truth of the higher literary mathematics and in putting Burke on the summit of the mountain. Birrell is really pure delight, the 18th century bookman in breeches, with just enough malice in his composition to give spice to all he says. He told me the very interesting story that when Blackburn, J. got his offer of a judgeship he was so depressed by his failure at the bar that he thought it meant a county court judgeship and accepted it in that sense.² And of Bob Romer³ who, you remember, was senior wrangler, a remark to Fletcher Moulton, also a senior wrangler, who in a patent case was making some mathematical observations, "I do not think it advisable for my brother Moulton to recall the indecencies of our past when the junior bar is present." Don't you think that charming?

I have had too little time for reading since I wrote last, though one or two pleasant things have come my way. I note a really good shocker to be read over solitaire at Beverly Farms — *Extremes Meet* by Compton Mackenzie which I guarantee to hold you both breathless. But otherwise I have been almost wholly occupied with Pascal and in the very laborious

¹ George Elton Mayo (1880–1949), professor of industrial research at Harvard, 1926–1947; author of *The Human Problems of an Industrial Civilization* (1933).

² When Colin Blackburn (1813–1896), Baron Blackburn, was named to the Queen's Bench in 1859 he was by no means the only member of the profession to be surprised at the unexpected elevation of a relatively unknown barrister, with no public career behind him, to such high office.

³ Some years after Sir Robert Romer (1840–1918) was advanced from the Chancery Division to the Court of Appeal in 1890, there were three Senior Wranglers on that Court. Sir James Stirling (1863–1916) was Senior Wrangler at Cambridge three years before Romer and eight years before Fletcher Moulton.

job of finding out how far he was just to the Jesuits and especially to Escobar.⁴ On the whole he comes out astonishingly well from an examination of that kind. In certainly not more than six cases is there misrepresentation of his authorities. Then I have been trying to work out the effect of Descartes and am reaching the conclusion that it is not until some such time as 1680 that he really became generally acceptable. Before that the Christian current of thought was much too strong for one who implied the complete rejection of scholasticism, and the types of religious revival in the period were not favourable to philosophic innovation. This has been hard work, but well worth it. And I ought not to omit telling you the title of an 18th century pamphlet it brought my way "Newton's Geometry not fatal to the Incarnation" — by the Rev. Josiah Biggs of Bethal Chapel, Stoke Newington — bound up in a volume I was consulting at the Museum. I can only say with emphasis that I should have liked to hear the Reverend Josiah preach, and that something has gone out of life in the realisation that in the hereafter the crowded state of the heavenly mansions, plus the natural excitement of the day of judgement will probably make me forget to ask for him. I suspect, from his pamphlet, that he will be near to Jonathan Edwards *et hoc genus omne*.

In the way of purchase I announce with pride and pleasure that the misadventure of earlier years is relieved and I have got a beautiful Bentham for the ridiculous sum of three pounds. It is a good copy — like yours in the 22 parts and uncut; I got it in Germany from the library of a Baron Wangheim, where I suppose it remained unhymned until the last member sent it to the dealer. And I picked up also a superb Holbach — the *Examen des prophéties*, a delicate blasphemy that would, I think, give you much pleasure. But recently the catalogues have been poor.

Our love to you both. Give my greetings to Rockport.

Ever affectionately yours, H. J. L.

Beverly Farms, June 16, 1928

My dear Laski: A letter good as usual has just been forwarded from Washington. I shall not receive books or pamphlets until and (in view of age) unless I return there. I don't recognize the criticism on McReynolds for notes — that is Brandeis's *specialité* — which I criticised to him at the beginning, but which he sticks to and which certainly enables him to put in a lot of facts that no one but he could accumulate and which overawe me, even if I doubt the form. I will get the *Harper*. As to the old age of nations I never could see much more than an *a priori* applica-

⁴ Antonio Escobar y Mendoza (1589–1669), Spanish Jesuit whose *Summula Casuum Conscientiae* (1627) was severely criticized by Pascal in his *Provincial Letters* for its tendency to justify conduct if intention was pure.

tion of a superficial analogy. I daresay you propounded China. As to students, I of course approve scepticism — though I regret irreverence. Don't ask me to disapprove of Ludwig — Einstein¹ sent me a German article by him, the other day, in which he said the best man he met in the U.S. was the oldest — "who but Lippo, I?" Ludwig must be all right.

As you see we are here — and have been since last Monday and I am as near bliss as I often get. I have read a little of Parrington — *Main Currents of American Thought* — with unmixed pleasure and instruction. Also a little of B. Russell's *Philosophy* — as yet without great edification although with pleasure — as he, so far, simply works out in more detail what one is in the habit of taking for granted. But I blush to admit that I know only by inference and only inadequate inference what Behaviorism is. I also have perused *But Gentlemen Marry Brunettes* — that nothing be lost.

But I am trying to take life easy — which I find hard. There always are things to do. However I have indexed my this term's volume of my decisions, and finished up — so far as my part goes, business that required attention. Yesterday afternoon we drove around the Cape and skirted the shores of your Rockport — everything was divinely beautiful. The sea its deepest blue — the quarries scarped omens of death — the long beach between R. and Gloucester beginning to look like a picture by Zamacois — picked out with figures of every colour — the roads through the foliage of June — and even the lilacs not yet quite gone — we have got the season at a little earlier stage than usual, this year.

I stop that I may creep out for a few steps in the fresh air and sunlight. During the winter I pretty nearly gave up walking — and now am making little attempts to revive the art.

Affectionately yours, O. W. H.

Devon Lodge, 28.VI.28

My dear Justice: A delightful letter from you tells me of a visit to Rockport, which opens up vistas and makes me a little envious. But I want to begin by my warm salutation over the dissent in the wire-tapping case,¹ a copy of which Felix sent me. If I may say so, that was a perfect thing. I found Taft's presence on the other side a little difficult to understand.

I have been hard-worked since I wrote last. A big case at the Industrial Court took two days; examination papers have multiplied; and I have

¹ Presumably *Lewis Einstein*.

¹ In *Olmstead v. United States*, 277 U.S. 438 (June 4, 1928), a majority of the Court over the dissents of Holmes, Brandeis, and Stone, JJ., held that evidence secured by tapping telephone wires in violation of state law was admissible against a defendant in a criminal prosecution in the Federal Courts.

had some ephemera like book-reviews to write. The first irritated me by its excess of needless verbiage; the second was, as you may imagine, tedious and joyless; and the third is, at best, a thankless job. And today put the *comble* on a hard period when I examined a young American who had written a Ph.D. thesis on "Political Motives" and had to fail him. It was like telling a man that he must go to the electric chair. The lad is so charming and his work so bad that one is divided between personal regard and intellectual honesty. *Hinc illae lacrimae!*

Of other things much that is pleasant. A dinner here for the Sankeys and Salvemini the Italian exile. Sankey was in great form, telling us tales of the Bishops (whom he much frequents) and saying that between them (there are 37) they represent a complete acceptance of the 39 Articles. Salvemini told us tales of his escape from the Fascist *régime*, which made one's hair stand on end; and he interested me profoundly by his insistence that the intelligentsia of Fascism were all trained in the Hegelian theory of the state. Then a dinner with some young lawyers in which I found pleasure for first of all they all regarded F. Pollock as the most eminent English lawyer living, and, secondly, they were all very critical of the legal training they had received, insisting especially on its separation from economics and political science. I was interested, too, to find that two of them who had visited America were insistent that every Harvard Law School man they met seemed five years more advanced in legal knowledge than an English lawyer of equivalent standing, and one of them, who had attended a sitting of your Court, thought it infinitely more business-like than the House of Lords. I went, also, to lunch to John Burns, who assured me (I) that a revolution was coming (II) that the English people would look to him to lead it (III) that he had kept a diary compared to which Pepys was negligible and (IV) that half the Webbs' knowledge of trade-unionism was derived from talk with him. I did not think it kind to comment and felt that I was infinitely kind. Another experience worth mentioning was a meeting of the Japanese Students Union at which I spoke to some sixty Japanese on the need for scepticism and found that for nearly an hour I could not even begin to guess what emotions or impressions I was evoking. Then after questions the Ambassador² moved a vote of thanks to me in a speech I wish I could reproduce. I began by being the sun which gives light, the rain that cleanses, the wings that fleetly carry, the moon which controls the tides of thought. I was food, drink, a stimulus to digestion etc. As he spoke I counted nearly forty metaphors until I was lost in bewilderment. And when one little gentleman was introduced to me (he looked about 30) he spoke saying "Sir, I and my son have derived benefit to the soul and instruction for the mind from the perusal of your honourable writings" I

² Baron Keishiro Matsui (1868-1946).

stood tongue-tied and helpless, feeling that the salutations of this grave oriental courtesy can only be adequately answered in a bow. I must add to this a German who called to see me this afternoon explaining that he wished for conversation to point out my errors systematic-epistemological and psychological-analogical. This with the air of an Atlas bearing the world on his shoulders. He arrived in a pair of grey flannel trousers, a blue velvet coat, an artist's tie which reached the pit of his stomach and a vast portfolio of unpublished writings which he hoped I would go through with him. I, poor boob that I am, gave him an hour and when I found that he was an exponent of what he called the anthropotheosophical theory of the state, which emerged when he began to tell me the significance of my horoscope (which he had cast from the data in *Who's Who*) had to plead an engagement which did not exist and hide in a colleague's room until I knew he had left the School.

I have had, as this chronicle will make clear, little time either to read or buy books. One thing I have read with very great pleasure, *English Prose Style* by Herbert Read which would, I think, interest you much; and in a different vein an attractive biographical essay on Granville Sharp by E.C.P. Lascelles which paints a really charming picture of that adorable eccentric; and a clever biographical study of Retif de la Bretonne (most perfect of pornographers!) by Funck-Brentano. But the Read did delight me, and I hope the Boston Athenaeum can produce it for you.

Tomorrow we have a vast party to celebrate my birthday, and on Saturday we are motoring to the Cotswolds for the week-end by Oxford and the Wye valley. Then back to another week of the Industrial Court after which I hope for freedom.

Our love to you both.

Ever affectionately yours, H. J. L.

Beverly Farms, Mass., June 28, 1928

My dear Laski: It seems like resuming a long interrupted conversation to write to you from here. For though you have been delightful I have been no good until I reached this breathing place. I think I mentioned having at last taken Parrington — *Main Currents of American Thought*. Now I have read him and were you here we would jaw a volume. *Imprimis*. His work seems to me solid and probably as just as any one man would be likely to be. I felt as if I had seen the movement of New England as I never had seen it before. Yet I was conscious all through of an antagonism that would have reached issues had we both been articulate as to fundamentals. The dogmatic postulate implied in the word "exploitation" occurring on every page, and the sympathy that I infer with the church-descended talk of the transcendentalists as to the infinite value and potentialities of every human soul, got my hair up. I know that we are

not at one on these themes — but I don't think that politeness requires me to disguise my opinion that the implications are noxious humbug. I will not amplify on that, but I can't retain my opinion. Some of his judgments do not commend my assent, but they are matters of detail. I am a long way off from believing that Thoreau was a thinker in any important sense. I am not surprised at what he said about my father, nor at his having missed what I think true, that although my father did not concentrate in his later days as he did when he wrote on puerperal fever, still he had in him a capacity for profound insight — that occasionally flashed out as I saw him. I think P's whole estimate of the federalist performance of making a nation in place of squabbling states is inadequate — &c &c. But in spite of all criticisms Parrington has instructed and stimulated me more than anything that I have read for some time.

We have paid our respect to Rockport which always moves me, and this morning have been at another moving spot, the old burying ground and lookout of Marblehead. One is in a different world, as one zigzaggles through the crowded streets, and pretty near heaven when one gets to the top of the hill where the old first settlers were buried and the point from which one gazes far out to sea. Within a rod or two of the top is the well by which the girl (Agnes Surriage) he made his mistress, and afterwards married, used to meet Sir Harry Frankland in the old days.¹ I guess the old Marbleheaders still stick to their traditions. I was told there of two old men talking of a third just dead whom one spoke of as of the place. "He wasn't no Marbleheader," said the other. "He was six months old before he came here." I have heard many yarns about them, which seem to show them as dogged as any Britons ever were. Of other books — a gentle yearning volume by Cardozo² — lovable creature I am sure. Stories by Owen Wister who is coming here for Sunday, and Bertrand Russell in process — not revelatory so far — though sound talk I doubt not. Many things in your letter give me pleasure — *inter alia* — Gosse — and the tale of Romer and Fletcher Moulton (at whose house I have fed and drunk well). It is a happy time here. Age has taken something from my capacity for delight but there is enough left for practical purposes.

Affectionately yours, O.W.H.

Beverly Farms, July 8, 1928

My dear Laski: A letter from you delightful as always comes this morning. Your *ennuis* (industrial court, examination papers, &c) have my sym-

¹ In his poem "Agnes," Dr. Holmes wrote of the romance of Agnes Surriage, servant in the Fountain Inn at Marblehead, and Sir Charles Henry Frankland (1716-1768), Collector of the Port of Boston from 1746 to 1757.

² *Paradoxes of Legal Science* (1928).

pathy. (I have received a first batch of *certioraris*.) Your pleasures and successes are my pleasures too. Your account of John Burns surprised me. Is he gone soft in the uppers? That seems to be your implication. I suppose he is pretty old. Your German who wanted to explain your errors to you makes me realize the advantages of the blessed Atlantic upon which I look. You tell me of your birthday but don't tell me how old you are. *Please do*. My time since my last has been taken up in good part by the business incident to July 1, bills and accounts. I haven't read much — I think drives more important. After Parrington I did finish Bertrand Russell's *Philosophy* — devoutly as I believe him (*ex rel.* you and Cohen) to be a great mathematician there seems to me something wrong in his speculative apparatus. He spends infinite time on matters that I am quite ready to take for granted, and in his general views seems to me to wobble between reason and sentiment. I should suppose that he hadn't given up the notion that absolute truth is attainable, though perhaps I am wrong on that. I don't retain his book in articulate form in my head but only impressions which I couldn't refer to specific texts. Expound the merits to me if you think me blind. Owen Wister was here last Saturday — Sunday and we went through Rockport again. It always moves by its simple majesties of granite and ocean — and I always look over to where you were and wish that you were there again. If you were, no doubt you would put books into my hands — as it is, my only slight *pièce de résistance* is Morison's *Oxford History of the United States* lent to me by Miss Loring¹ the other day — as yet I have read but a few pages. Also I have partly read an account of *Russia after Ten Years* — report of the American Trade Union Delegates to the Soviet Union — optimistic, but intended to be fair. Perhaps it comes down to the question, as so many things do — of what kind of world you want. Personally I do not prefer a world with a hundred million bores in it to one with ten. The fewer the people who do not contribute beauty or thought, the better to my fancy. I perfectly realize that the other fellers feel otherwise and very likely would prefer to get rid of me and all my kind. Perhaps they will, and if they do I have nothing to say, except that our tastes differ. That is the justification of war — if people vehemently want to make different kinds of worlds I don't see what there is to do except for the most powerful to kill the others — as I suppose they did in Russia. I believe Kropotkin points out the mistake of the French Revolution in not doing so.

I have a line from Wu this morning. He is now engaged on a code — under government employment and has given up or was contemplating

¹ Katharine Peabody Loring (1849–1943), North Shore friend of Holmes, and sister of his associate on the Massachusetts Bench, William Caleb Loring, *supra*, p. 758.

giving up his judgeship. His paper is headed Nationalist Government of the Republic of China. He proposes to come over here in about a year, Pound having offered him a scholarship. I warned him that so far as seeing me was a motive, as he says it is, it wasn't safe to calculate so far ahead — but he replies that he hears (seemingly with belief) of a man who is 250 years old and in good health. I am afraid that the oriental criteria of evidence are not stringent. Tell your wife that though I don't often mention it I always put my faith in her to prevent your working your machine too hard. I have heard of men who exhausted their whole stock of vital energy in getting double firsts and did nothing afterwards. You have passed far beyond that stage, but I still fear that you run up bills against the end of your life. Remember the *Peau de Chagrin*. Another drawback to reading is slumber. I feel as if time couldn't be better spent, but you can't put it down on a list of things done.

Affectionately yours, O. W. Holmes

Devon Lodge, 7.VII.28

My dear Justice: A delightful letter from you breathes the peace of the country, and told me, as I hoped, that you had derived pleasure from Parrington. Of course he writes as a Southerner, with a permanent bias against the North. I, who believe most of the claims made for the South are either untrue or undesirable, remain unmoved by that side of him. But he has real intelligence and insight, and a delightful style.

We have had some pleasant days since I wrote last. We celebrated my birthday with a party chiefly notable for talk from H. G. Wells which I shall not easily forget. Part of it was judgment of people — always quick and sober and vivid: of Galsworthy that he was always about to be an artist, but at the moment of insight a gift of unshed tears blurred the sureness of his vision; of Shaw that he wrote of government as though people had never cared for liberty; and of Henry James that he failed because he could never accept the possibility that life was simple. Then to my surprise he told us that he had been studying the art of prose and felt strongly that three English lawyers were among the great artists — Selden, Maitland, and Macnaghten — an interesting choice. And I was immensely touched by his kindness. I had a young Hungarian novelist here, on the verge of making his way. To watch Wells discussing his job with him, his patience, his tact and his discrimination were a real lesson to me in the greatness of a great man. I wish there were more like that. My young Hungarian said he felt, like Pizarro, that a new planet had swum into his ken. Then next day we motored down to the Cotswolds and spent a divine week-end in divine country. I have an old school friend near Gloucester there who teaches in a village school and we spent

an afternoon with him. It was very interesting. He is the son of a clergyman who, in my day at Oxford, was an intense Catholic. During the war his faith left him and, with it, most of the ordinary ambitions. So he lives in this tiny village, teaching history, and working slowly at a book on the early history of the Christian apologetic. His greatest friend there is the vicar, who is something of a scholar and the two spend the long evenings with Tertullian and Cyprian and Gregory Nazianzen¹ on the table fighting it out together point by point. For neither of them is there much real outside of that; and they speak of Harnack, Wellhausen, Strauss² as men across the road whom the village constable should either protect or arrest. I, as you can imagine, spent some delightful hours there; not least of which was derived from the spectacle of Frida's amazement at a man whose wife is a simple country girl much like Heine's Mathilde, happy if he buys her a ribbon or a gown, and thinking him sweetly mad because he is a "scholar" and probably not so bad as her simple Catholic faith would assert because he gives her so happy a time. We came back to a world which (for me) began with the Industrial Court and continued by my drafting a report for my colleague Lees-Smith on what we call the Savage [*sic*] case³ — the kind of police mishandling of witnesses with which that Chinese case⁴ will have made you familiar. Then a stream of foreign visitors — a German who wanted to discuss Gneist⁵ (whom I imagined now to interest no living being) an American lady who said she was a sociologist but seemed to me merely to regurgitate the worst excesses of Mr. H. L. Mencken, and an Italian lawyer whose Italian I understood better than his English and had to make to speak Italian. Then a Polish lady who came to me in the mistaken belief that I was related to the film magnate and could only be convinced with great difficulty that I was unable to get her work in Hollywood, and an Indian gentleman who stayed with me an hour to denounce the British government. He began with the sins of Clive and when he got to the mutiny I explained

¹ Saint Gregory Nazianzen (c. 325–389), Catholic Bishop of Constantinople; poet, orator, and theologian.

² Adolf von Harnack (1851–1930), Julius Wellhausen (1844–1918), and David Friedrich Strauss (1808–1874) were Protestant theologians each of whom sought to pursue Biblical criticism without regard to dogmatic consequences.

³ Hastings Bertrand Lees-Smith (1878–) was a Parliamentary member of a Tribunal of Inquiry to investigate the interrogation of Miss Irene Savidge by Scotland Yard. The report of Mr. Lees-Smith is in *Command Papers* (1928) #3147, p. 17.

⁴ *Wan v. United States*, 266 U.S. 1 (1924). The Court in an opinion by Brandeis, J., had held that a coerced confession was inadmissible in evidence in the Federal courts.

⁵ Rudolf von Gneist (1816–1895), jurist, historian, politician, and ardent admirer of English institutions.

that I had another engagement. He left protesting that he would return to bring the history down to more modern times and I was sufficiently attentive (I did not have to open my mouth) to leave him persuaded that I was deeply moved. Let me add as a final embellishment a student who came to tell me that he had discovered the secret of Hegel and wanted funds to publish. I suggested the more normal expedient of a publisher and he accused me of a desire to suppress the truth. I asked him if he had read Hegel and he said that he knew all that had appeared in English. I suggested that a knowledge of German was not without its bearing on the secret. He made a grandiose gesture and said "that is necessary only for the pedestrian mind of an academic."

I have, too, been writing a little, but mainly some book reviews, one of which, on Balfour's preface to Bagehot,⁶ I hope to send you later. And some reading — the most interesting being Rouse Ball's *History of Mathematics* which has literally fascinated me, especially in its account of the period between 1650–1800. What knocks me flat is the extraordinarily early age at which these fellows seem to make seminal discoveries. There's Jacobi or Abel,⁷ both dead before thirty and yet with quite imperishable names; and, at the other end, the amazing degree to which that faculty retains its original vigour into extreme old age. Another book from which I have had much pleasure is Wyndham Lewis, *Time and Western Man* — a brilliant and to me wholly sympathetic onslaught on Bergson. And I have enjoyed a good book by one Cresson on the main currents of French philosophy. Nor has fiction been neglected. I made an effort and re-read Proust — *Chez du Cotè Swann* [*sic*] — and gave it up with relief to read G. Sand's *Consuelo* with infinite delight followed by a superb detective story by A. Christie called the *Mystery of the Blue Train* which I commend to you both as connoisseurs.

Books I have bought none, for the catalogues have been unkind. But I hope shortly to commence operations.

Our love to you both.

Ever affectionately yours, H. J. L.

Beverly Farms, July 20, 1928

My dear Laski: Whether this will get off in time to catch the evening mail and then be in time to sail from New York tomorrow I doubt — still

⁶ The review has not been identified.

⁷ Laski was in error in believing that Karl Jacobi, *supra*, p. 1038, died before he was thirty. Niels Abel (1802–1829) was a Norwegian mathematician who discovered the impossibility of solving the general equation of the quintic by radicals. He and Jacobi independently formulated the theory of elliptical functions.

more whether the effort can give you anything so interesting as your last. I didn't know Parrington was from the South. That explains some things. Your account of Wells has some little surprises in it. I didn't remember MacNaghten as a master of style and had not thought of Selden in that connection. There are fine and famous passages in some of the [illegible]. It gave me pleasure to hear of Wells's kindness and magnanimity. I don't know but you are right in calling him a great man. I have just received an account of the Cohen dinner¹ — to match you with a possibly great man on this side. It must have been very moving — and it is pretty to think of his old father and mother being there to see the triumph of their son. I notice that the toastmaster quotes Cohen as saying that Bertrand Russell comes nearest to being his philosophic God — and you seem to lean in that direction. I haven't got that religion from anything that I have read — and I did get pleasure from Fred Pollock a few days ago (writing of B.R.) "His theodicy so far as I make out consists in being angry with the gods for not existing, because if they did he would like to break their windows." I think that quite perfect.

I have finished the *Oxford History of the United States*² with continued pleasure and feel that I learned from it — incidentally to modify my old impressions of MacLellan and A. Johnson — at rare moments there is a pert turn in the end of a sentence — and sometimes hints at convictions I don't share. He seems (from a very few words) more than respectful to Christian Science.

One or two minor experiences — Owen Wister sent to me *The Sun Also Rises* by Hemingway — youngish American author, living in Paris, and I am told one of a gang that call one another great. Wister thought that when he left the garbage can he had a future. It is a queer thing — some rather every-day doings of people indicating no superiority of any kind, never expressing an idea — but conversing in the language of toughs, making up for their inability to find a discriminating word by "damned" and "hell" — all getting more or less drunk every day — with a hint of fornication, not overstressed — and yet one is interested. Mrs. Curtis suggests, because it is pure narrative which she said always interested — but rarely had been practised since Swift. That may be it, and anyhow I read on when so far as appeared I should have thought the *dramatis personae* in real life worse than bores. Item. A good article by

¹ In October 1927, Morris Cohen's students at City College had given him a dinner honoring his twenty-fifth anniversary as a member of the Faculty. Felix Frankfurter was toastmaster, and messages of affection and admiration from many distinguished persons were delivered. See Cohen, *A Dreamer's Journey* (1949), 148-149.

² By Samuel E. Morison.

Frankfurter on "Distribution of Judicial Power between United States and State Courts."³ I should think he was doing a public good in tackling as he has an ungrateful and, but for him, tedious subject.

I now await from the Athenaeum a *Life of Villon*, said to be A-1⁴ and from the bookseller, Henry Osborn Taylor, *Human Values* (and something else that I can't read certainly) recommended by a professor whom I met the other day and who had been examining brains. He found no explanation in the brain of Morse of Salem — of his power to draw equally well with both hands — and I believe at the same time.⁵ In short there was very little evidence of the localizing of faculties. You get a lot of things quicker than we do if we ever get them — but I am surprised to learn how many eminent writers of books &c &c there are here that I don't know about. I was frightfully impressed with the same thing on a larger scale when I read *These Eventful Years*. There promises to be enough to keep me busy during the short time that I have left. My love to you all.

Affectionately yours, O. W. Holmes

Devon Lodge, 23.VII.28

My dear Justice: A delightful letter from you cheered up some grim days of work. I have had to run it hard this last fortnight in order to clear up things for Friday when, at long last, we get away to a haven of peace in the Ardennes. First I have had examiners' meetings, which are a frightful bore; and this year, as chairman, I had all the work with the additional burden of trying to steer an even keel with a crew which naturally enjoys fighting over every question of pace and direction. Then I had to go down to Bristol to speak on the "General Will" to the Aristotelian Society.¹ I found myself in the midst of a gang of old-time Hegelians out for blood, including one passionate lawyer (a county court judge named Dowdall)² who said with, I am sure, perfect sincerity that he had met a general will six times in his life; and an ancient professor named Mackenzie³ who said that the general will of America was permanently embodied in Woodrow Wilson's speeches. I enjoyed it in the

³ 13 *Cornell Law Quarterly* 499 (June 1928).

⁴ D. B. Wyndham Lewis, *François Villon* (1928).

⁵ Not identified.

¹ See, *supra*, p. 1059.

² Harold Chaloner Dowdall (1868–), Judge of the County Court of Lancashire, 1921–1940.

³ Probably Professor John Stuart Mackenzie (1860–1935); Professor of Logic and Philosophy, University College of South Wales and Monmouthshire, 1895–1915; author of *Outlines of Metaphysics* (1890).

way that one likes to strike a note of scepticism in a meeting where people are testifying to private revelation from on high; but I thought it rather a childish performance. Then three days at Oxford giving some lectures to five American students ensconced there for the summer. That I thoroughly enjoyed. They cross-examined me with machine-gun rapidity, and I felt at the end that I had really earned my keep. Also I found some nice books there, especially some early 17th century French pamphlets which I would have gone far to obtain. And I dined in New College and thought that the older dons were like the unburied dead. One of them, a classical scholar, made it a point of honour never to find out what happened to his old pupils; it was he thought dangerous to his peace of mind. A second explained to me that he was greatly distressed at the declining influence of the aristocracy who so clearly represented the best brains of England. And one of the younger dons kept telling me that America was for him simply a mass of uncivilised brutality — “no standards; one suspects, no values, no ideals.” I spoke sharply upon that head, especially as the impudent puppy had never visited America, and was merely attitudinising. He could not bear, he said, to open American books; he was so afraid that the style would spoil his ear. I had a picture of a narrow and self-satisfied little community too acutely conscious of the demerits of others to consider its own. But I met there Hardy the mathematician,⁴ and he atoned for much. He reminded me somewhat of Morris Cohen — the same width of interest and razor-like mind, and his honesty was remarkable. He said that England historically had only one supreme mathematician in Newton and perhaps a dozen to whom the word eminent was applicable, and he traced much of this to our insularity on the one hand and bad academic methods on the other. I thought his standards the kind of thing that makes one inclined to creep into a hole and die there, but you could not help being impressed because he so clearly felt that mathematics were *the* most important thing in the world. Then a dinner with Sankey to meet Scrutton, L.J. They speak of the latter as ill-tempered; but I found him wholly delightful, and when he praised Shaw of Massachusetts, Watson, MacNaghten, and divers others of my heroes, my heart went out to him. He told us a good story of Jessel, M.R. saying to him as a junior that he must always believe the solicitor honest while the case is in process and dishonest until the fee on the brief has been paid. He divided judges into 3 classes; those who listen, those who won't listen, and those who can't listen, and said that the middle class is the best because they lead straight to the Court of Appeal. He was, as I hope I faintly indicate, wholly delightful. I gathered that he met you

⁴ Godfrey Harold Hardy (1877–1947), Professor of Pure Mathematics at Cambridge.

once years ago on a tramp with F. Pollock, Leslie Stephen and, if I have it right, Douglas Freshfield.⁵ Finally I record a dinner here for Neilson of Smith College,⁶ an old Harvard friend, who warmed my heart with a great account of Felix and comforted my fear that I may be wrong in refusing to give money to the Law School by hinting that Pound has the illusion of bigness in a dangerous degree.

I have had but little time to read anything serious, and in trains and bed novels have been my lot. One, Trollope's *Way We Live Now* moved me much, and interested me by its clear anticipation of the modern realistic novel. An American one, *Home to Harlem* by Claude McKay I thought had very moving parts, but was over-sexed as is so much of fiction just now. . . .

We go off on Friday to a place called Waulsort in the Ardennes near Luxembourg. We were there two years ago and liked it greatly. We shall stay there till the end of August and then have a look at Amsterdam which I have never seen. Whatever comes I have two full months of complete peace ahead. After that I am always ready for work.

Sir, in answer to your enquiry, I beg hereby to state that I was born on June 30, 1893. I have not ceased to talk, except at nights, since about June, 1896.

Our love to you both.

Ever affectionately yours, H. J. L.

*Grand Hotel, Waulsort-sur-Meuse
Belgium 31.VII.28*

My dear Justice: It could hardly be more delightful than here. My room looks down on to the Meuse which is as clear as a mirror of silver; and above it are hills of iron-grey granite which are in parts masses of yellow gorse. It is a perfect place to rest, for beyond a little tennis there is nothing to do except read and write and talk. The Belgian friends we are with are charming people — he an architect and his brother-in-law an artist whose specialty is etching, much in the genre of Méryon — by which I mean that a careful scrutiny of his detail will display all kinds of attractive and unexpected blasphemies much as Méryon put those devils' faces in the dark corners of his bridges. We talk much of artists and their critics and two things always keep emerging that interest me. The first is their refusal to recognise any relationship between what they see and the philosophic account of what aesthetic is; it is as though they

⁵ Douglas William Freshfield (1845–1934), geographer and mountaineer.

⁶ William Allan Neilson (1869–1946), President of Smith College, 1917–1939, had been Professor of English at Harvard while Laski was on the Harvard faculty.

felt possessed of a private world from which a body of rationalised principles is warned off. The second is their insistence that Anglo-American art means Turner, *hors concours*, then, at a distance, Whistler, and then, once more at a distance, Muirhead Bone, Cameron, Mary Cassatt. For the well-bought names, Raeburn, Romney, Reynolds, they seem to have unmitigated contempt. But the architect is lyrical about American architecture which with that of Holland he insists leads the world. And his explanation interests me. Americans, he says, are experimenting with new forms in which they are free from the hampering effects of dead tradition. They can therefore suit both design and material to the purpose they have in view. Their work is accordingly more original and self-expressive than English, which is always pseudo-Jacobean or pseudo-Georgian or French which is always pseudo-Louis XIV or XV or empire. Being ignorant of these matters, I take it all on trust. But it does, I must say, seem not unreasonable on *a priori* grounds.

One other thing is extraordinarily interesting, and that is the intense patriotism of these small nations. They speak of their poets, historians, philosophers, as though they were world figures. Have you ever heard of a Dutch epic poet named Vondel? Yet I assure you that beside him, here, at least, Dante and Milton are pigmies indeed. So, too, they do not doubt that the standard of medicine, law, education is infinitely superior to what exists elsewhere. It isn't exactly complacency; some of it is whistling to keep up their courage. But it goes down to the root of them, and is delivered as *obiter dicta* in a way quite impervious to argument. And when a Belgian colonel tells me that Italy has swarms of spies here in its desire to annex the Congo for an African *Italia Magna* I can only wonder whether there are ten Italian politicians living who ever remember more than (say) once in a week that there is such a country as Belgium.

But it is all amusing and all peaceful; and there are some queer characters to give it salt and savour. I instance a bargeman who looks after a coal lighter which plies for hire up and down the Meuse. I gave him a cigarette and we fell into talk. He had sailed the four seas, knew every line Conrad had ever written, regarded *Moby Dick* as the greatest piece of literature ever produced by man, and desired only the abolition of the female sex for the world to be quite perfect. "Women," he told me, "are all money one week and all children the next." No woman has ever set foot on his boat and the four members of the crew have all to prove their capacity for mending clothes before they are admitted to its ranks. The boat is kept marvellously clean, and the crew has to bathe with the master every day or leave the boat. There are two bottles of grog for them every week and if they are not consumed the old man (he is 73) holds an in-

quest. Let me add that the only American he appears to care twopence about is Farragut¹ and the only Englishman Duncan² because he beat the Dutch. These he loathes because they eat too much and let themselves get fat which he holds (after marriage) to be the supreme sin. He dislikes all schools, priests, vegetarians and drunkards. He knows half a dozen words of Latin (especially *veni, vidi, vici*) of which he is enormously proud and they come in upon the most unexpected occasions *e.g.* "M'sieu, I was at Namui last week, and got some wonderful tobacco very cheap — *veni, vidi, vici*." He is having some repairs done here, so I shall have the joy of talk with him until Sunday. He forgives my marriage on the ground that I was too young to know what I was doing.

In the way of reading I have little to report and less to recommend. Westlake on *International Law*, Redslob's *Histoire des grands principes du D.I.* cannot be called exhilarating, but I have to read them from grim need. To me the outstanding thing in this particular literature is the sheer genius its authors possess for elaborating the obvious; and at the end the result seems to me far less impressive than the labour involved would warrant. But I have enjoyed greatly Ruggiero's *History of European Liberalism*, which I recommend to you, even though it is over-Hegelian in temper; and *Pendennis*, which Diana brought with her, has compensated for long pages of Westlake and company. Also I brought with me Macaulay's *History*, and Philistine as the fellow is he can certainly tell a story as no other writer I know except possibly Parkman or Hous-saye³ (1814). The portrait of the early Bank of England is simply supreme as narrative.

I hope your heat wave has passed. My colleague Gregory who was in New York *circa* July 10 said he prayed quietly for death.

Our love warmly to you both. *Ever affectionately yours, H. J. L.*

Beverly Farms, August 13, 1928

My dear Laski: Your first vacation letter has arrived and has given me the usual pleasure. I have told you about Vondel, *quoad nos*, before. My father amused himself with the thought that Vondel and Wendell might be the same and had his works and his portrait (which I now have) by Janus Lutma engraved in a manner peculiar to Lutma — while I have

¹ David Glasgow Farragut (1801–1870); Union Admiral, in the Civil War, whose most famous pronouncement, "Damn the torpedoes," was uttered during his greatest triumph, the battle of Mobile Bay.

² Adam Duncan (1731–1804), Viscount Duncan, whose victory over the Dutch fleet occurred in the North Sea in October 1797.

³ Henri Houssaye (1848–1911), military historian who in his *1814* (1888) and subsequent volumes told, with devoted eloquence, the story of Napoleon's last campaigns.

Lutma by Rembrandt in my dressing-room. So I am glad to hear that Vondel is the Belgians' great man.

I have no great things to tell about myself. I am tired this morning as we had a feller here for Sunday and more than an hour and a half of talk takes it out of me. My wife if she sees signs of fatigue always attributes it to the *certioraris* — I, not. But I have done 125 and have told the clerk to send no more unless I ask for them. If they have not tired me they have kept me from reading more than a very little. I have on hand a book by one Dill — *Roman Society from Nero to Marcus Aurelius*, which was recommended to me and which has information that is for the benefit of my immortal soul — and which therefore I expect to finish — but which is almost the *ne plus ultra* of what I dislike as writing. Fat and flabby adjectives — much repetition — the conventional attitude that any loose talk on Juvenal *et al* is *painful* — deliquescent phrases about the corruption of the nobility by the example of Nero and the others — Oh Lord — he makes me tired. But as Sidney Bartlett¹ said of an argument by Evarts: "But through it all there ran a vein of thought — attenuated at times to be sure, but never wholly lost." (S.B. patronized everything human). So I keep on. I read Lady Oxford's novel — *Octavia* — and it made me a little sad — good hunting talk — and horses described in human terms. But the tale sounds to me as if years had not added wisdom. Also some things by Ernest Hemingway that I think I have mentioned.² Art shows in making you interested in the picture of people doing and saying what in life would not interest you in the least. I hope now to read a little more and presently shall go to sleep over Dill. I am even thinking of taking a book by your friend Trollope, perhaps *Barchester Towers*, and seeing how I get on with that. Always there is imminent some brief touch of the classics — but with them almost always the feeling of wasted time. It would be a momentarily pleasant and possibly a wholesome change to have two or three days come when I didn't quite know what to do. There is always something and partly from temperament it generally presents itself in the light of a duty. You seem always to read no matter what with gusto. I almost always read with a groan, a mark, and with a count of the number of pages. Even my taste for novels like my taste for meat has faded, although I still am all there on a real story of the old fashion, not necessarily detective — provided there isn't too much of it — as there was for me in *La guerre et la paix*. I suppose it is the Old Testament's grasshopper become a burden — but

¹ Sidney Bartlett (1799–1889), for years a leader of the Boston bar and an imposing figure on the profession's national horizon. Holmes spoke of him briefly in his *Speeches*, 41.

² Holmes read both *The Sun Also Rises* (1926) and *Men Without Women* (1927) during the summer of 1928.

cases don't, nor philosophical books that hit me. I wish I had kept a list of the books recommended by you. Some shaft more lucky than the rest might seek my heart. Farewell — I am glad you are having such a good time.*

Affectionately yours, O. W. Holmes

* Don't mistake me — I am.

*Grand Hotel, Waulsort-sur-Meuse
Belgium, 4.VIII.28*

My dear Justice: F. Pollock's remark on Russell is one of the most brilliant things I have heard in many a day. I don't, I think, go myself anything like so far as Morris Cohen in my respect for him. I thought his Lowell lectures a big piece of work;¹ and I like the general ethos of his mind. But he reminds me too much of the little boy who rings the street bell and runs away, to give me ultimate comfort. All this, I add, is subject to my complete inability to know what his mathematical logic is about, and to my contempt for his political writings as obvious paralipomena done merely to make money. I do greatly admire his courage; and I share his desire to break the windows of any heaven there be.

I am having a delightful time here, favoured by excellent weather. I write and read from 9:30 to 1; walk and talk in the afternoon; bathe and play tennis from 5-7; and perform my social obligations in the evening.

My boatman has left; and the one pleasant adventure has been in the book line. The nearest town to this is Dinant, and I went there on Tuesday to get some money. In a junk-shop by my bank I found a notice about books for sale, and explored it between trains. I found for a franc a piece ten valuable pamphlets of the period 1610-15; all of them dealing with that Gallican controversy I hope to make a feature of my book; the complete political works of Justus Lipsius in a nice quarto for five francs; and a perfect first edition of Diderot's *Pensées philosophiques* for two francs. The man was glad to get rid of them and I went on my way rejoicing. He had also an admirable old map of Antwerp (1573) published by the Spaniards to explain the fortifications. I bought this from him for thirty francs and resold it to my friend Van Overloop,² who deals in these matters, for six hundred; Van Overloop being overwhelmed by my moderation as I left it to him to make the offer. He has resold it to the *Musée Plantin* for two thousand francs. So, like Artemus Ward, I combine pleasure with instruction.

In the way of reading, I have much that is pleasurable to record. First, a really amusing novel I conjure you to read — *Inisheen* by G. A. Bir-

¹ *Our Knowledge of the External World* (1914).

² Not identified.

mingham, one of his most admirable pictures of Irish impossibilism. Then a really good and illuminating book by a Frenchman named Schatz called *L'individualisme* — a history and a defence at one and the same time. It is even stimulating on old themes like Hobbes, and on forgotten people like Dunoyer³ it is quite excellent. Then I have been re-reading, *longo intervallo*, Carlyle's *Medieval Political Thought*. At this point I am overwhelmed by an idea and, at the risk of boring you, I *must* get it off my chest. My idea is that the Christian doctrine of equality has nothing to do with political equality at all, and that insofar as it has any basis for political inferences it is against and not in favour of equality. S. Paul's view seems to me to be that men's equality before God is negative *i.e.* our distance from him is so vast that we all stand upon much the same level; and since all beings are dependent upon him because his grace only is the canon of salvation, no one has an equal claim since the will of God predestines some and not others to it. There is therefore (a) no right to salvation (this depends on the will of God) and (b) no equality since persons predestined to salvation are worth more than persons not so predestined. I build on passages like Galatians 1.15. II Timothy 1.9. Romans 9, 11 and there are plenty more; and this view would fit in with the complete acceptance of slavery in St. Paul, Matthew, Mark and Luke. If I am right it means that Christianity did not in the least take over the Stoic philosophy in its beginnings; so far as I can see this was a Scholastic development of the tenth century which reached its best expression in the 13th. Carlyle, of course, preaches the ordinary Christian view, with the test of "Jew nor Greek" etc. as its foundation; but this, I think, means that among the *predestined* there is, in the sight of God, neither Jew nor Greek; *i.e.* his grace is so wonderful that he can for salvation neglect all differences. I should therefore argue that the Christian ethic was at no point of itself a liberating influence until it rediscovered natural law in the Scholastic revival. I put all this to a Jesuit from Louvain who is in this hotel and he was so horrified that I was tempted to feel that it might be right. Have you ever looked at the problem from this angle?

Of other things, there is but little to tell, I re-read Bryce's *Modern Democracies* for lecture purposes and found it dull; on the other hand I was impressed by Lowell's book on *Public Opinion*. And I read with pleasure Villard's *American Portraits*, liking especially the one on Colonel House, probably because there are few political types I dislike so completely as *eminences grises*. I hope you share that view.

My other remarks must be discreet. I note that the Dutch have the largest appetites in Europe. On the average their normal lunch here

³ Charles Dunoyer (1786-1862); champion of economic liberalism both against the authoritarians of the Restoration government and against the new democracy; author of *De la liberté du travail* (3 vols., 1845).

begins at one and ends between 2:15-2:30. They do not talk but make what William James called a direct march upon the meal. They look so serious while they are at it that I believe for them it has come to acquire a sacramental character. I note, second, the extraordinary parsimony of the French. Three people here from Paris combine (quite different families) for one morning paper; and a terrific row developed between husband and wife because the former put a 15c stamp too much on a letter. I note, third, that the Germans like to discuss the origins of the war, and as soon as they begin the French bristle up and *Allemands* become *Bosches*. Acton's formula "when in doubt, play national character" has real points.

Our love to you both; and forgive the rambling gossip of a minute village.
Ever affectionately yours, H. J. L.

*Grand Hotel, Waulsort-sur-Meuse
Belgium, 13.VIII.28*

My dear Justice: Life moves so peacefully here that it is difficult to think I was ever caught in the whirlpool of term. I am having the happiest possible time, enough reading and writing and talking to make each of them specially attractive as it comes. This week we have had with us James Ensor, I imagine the best of living Belgian artists, a man of seventy and a great *causeur*. I have enjoyed him hugely. To discover an artist whose God, so far as he has one, is Henri Poincaré — is remarkable enough. But to find him also a perfect tempest of ideas on everything is really exhilarating. He is that rare thing — an artist conscious of the need to understand his own art. He pleases me by rejection of all effort to distinguish between the highest forms of creative effort. That, for him, is the attractiveness of Poincaré; he recognizes, he says, in P's account of his scientific experience the same creative impulse which has led him to his own best pictures. And to hear him on the Church in Belgium is a joy. He had not been to confession for thirty years when he married and the *curé* punished him by refusing to allow him to enter the Church by the front door. So Ensor marked his sense of the fitness of things by giving the verger a hundred francs and the *curé* ten when he left. He would please you by his enthusiasm for van Ostade. He puts Peter Brughael at the head of all the Flemish school, and, to my surprise, Memling very much in the second rank. And in his literary tastes he is curiously classical. He sees things in Corneille and Racine that literally do not exist for me; and, conversely, I cannot persuade him that there is anything at all in the poetry of the 19th century romantics. He loathes Scott and Dickens and Meredith and George Sand, and makes a God of Voltaire. It is curiously fascinating

to walk with him and watch how his eye fastens upon a proportion in the landscape, an unexpected contour, some sudden cluster of flowers in one of the promontories of rocks in which the district abounds. I would give much to bring him to I Street and spend a night with you both. And Mrs. Holmes must know that he cannot avoid a perfect passion for tiny, absurd, bizarre ornaments. He wanders into shops and cottages and comes out with little china dogs, or a cup with a scriptural illustration, or a kind of sampler with verses telling the child its duty to God. Altogether a splendid person.

In the way of reading, I have had a jolly time. The most interesting thing was Redslob's *History of the Principles of International Law* which illuminates for me a side of things I did not know. What interests me especially is the number of really second-rate minds who have had great influence in that subject. I can't see that Puffendorf, or Wolff or Vattel, or Bynerhöck, are much more than, say, the average text-book writer in an American University; yet each seems to mark an epoch in his subject. And, intellectually, Grotius seems much more to have amplitude than profundity. I should have said that Suarez or Franciscus de Victoria in sheer rational power could have given him points every time. Then I have been reading an attack in the name of the classic French jurisprudence on Duguit and Co. — very ably done except for the exhausting proof that jurisprudence must have a metaphysical foundation.¹ I have never been able to take seriously poor Duguit's denial of metaphysics in law for the simple reason that he is himself the slave of Comte who is riddled with metaphysical presuppositions. Also a charming book on the origins of the French Romantic movement, by Daniel Mornet, (Hachette) a book I warmly recommend both for the new (at least to me) knowledge it gives and the charm with which it is written. And lastly a topping novel of William de Morgan's *Joseph Vance*, which I had never read and really enjoyed as one enjoys those spacious three-deckers of the 19th century written upon the assumption that time does not exist. And here, of course, that assumption is gloriously true.

I have also been writing happily for three hours or so each day — at what the French call a *leçon d'ouverture* for a course of lectures a colleague is arranging on the 18th century in France.² I am trying to explain what the Age is intellectually and enjoying it more than I can say. I think it has some new things in it tucked away, and some old things set in a light different from the usual account. I have at least offered some expla-

¹ Perhaps Julien Bonnetcase, *Science du droit et romantisme* (1928).

² "The Age of Reason," in *The Social and Political Ideas of Some Great French Thinkers of the Age of Reason* (Hearnshaw, ed., 1930), and reprinted in *Studies in Law and Politics* (1932).

nation of Rousseau which it would be worth while to explore in detail. The lecture will be printed one day in a joint volume and I shall, of course, send it along to you.

Of other things, there is not much to tell. Once a week I have been in to Dinant to get money from my bank; and I found there some nice 18th century pewter bowls which pleased me since Frida has a passion for ancient pewter. And I bought there also a volume of Bernardin de S. Pierre's *Études de la nature* with the name of Manon Phlipon on the title — the *bouquiniste* not knowing, or perhaps, not caring, that Manon Phlipon became Mme. Roland and was certainly a lady worth knowing.³ I add one final experience that will interest you. We motored with a friend on Friday to Bouillon⁴ — the remains of Godfrey's chateau of that ilk, and in the visitor's book at the inn under, I think it was 1873, I saw the name of Henry Adams with the remark — "food excellent; the light wines distinctly good." I fancy I can imagine his satisfaction at striking a note which left in at least one region the sense that there had been a faint disappointment he was too stoic to emphasise.

Our warm love to you both. I hope the heat wave of which we read has left Beverly unmoved and unscathed.

Ever affectionately yours, H. J. L.

*Grand Hotel, Waulsort-sur-Meuse
Belgium, 18.VIII.26*¹ [sic]

My dear Justice: A perfectly delightful letter from you gave me immense pleasure. But you must not even allow the sombre notion of resignation to play over your mind; and you must not even want intelligent eulogy in the press to confirm our sense that you are where you ought to be. We your disciples, Felix, Brandeis, Mack, Cardozo, Hand, Cohen and I, hereby after proper deliberation put our hands on our hearts and swear unreservedly that we perceive only in your work the qualities that have made us proud of you and in undiminishing degree. *Macte antiquae virtutis*, and set your barque for ninety.

Mrs. Asquith sent me the novel you have been reading, but I must confess that I did not extract much enjoyment from it. I suppose it was because I have never even seen a meeting of the hunt, and beyond an acute

³ Manon Phlipon Roland (1754–1793); Girondiste and revolutionary, whose last words at the guillotine have preserved her name: "Oh Liberty, what crimes are committed in thy name!"

⁴ Bouillon, the "Key to the Ardennes" is the site of the remains of the castle of Godfrey of Bouillon (c. 1060–1100), the leader of the First Crusade.

¹ The dating of the letter is manifestly wrong, perhaps in the day, certainly in the year; the month is evidently August.

affection for dogs am not unduly moved by animal kind other than man. But the judgment of F. Hackett which you recall to me² was really simply silly. She has amazing defects, flippancy, slap-dashness, huge tracts of unjustifiable ignorance, a zest to be in the limelight; but I think, too, that she is capable of really profound feeling and that she has in a high degree that indefinable quality we call *esprit*. I don't think, moreover, that her husband, who had exquisite sensitiveness, would have had the affection for her he did unless she possessed great qualities. Most of what Hackett felt about the English aristocracy is, in my belief, pretty accurate. But it doesn't happen to be true about her.

Stimulated by your interest, I sent for Hemingway's *Men without Women*.³ Certainly real power which makes one attentive throughout. But I make two observations for your comment. First, he has the talent of the butcher rather than of the surgeon. He hacks off a great piece of life without undue attention to the cost of the operation; compare and (I hope) approve the exquisite grace and sensitiveness of Maupassant. Second he has a nasty *nostalgie pour la boue* which is, I think, due to a quite mistaken belief that to make his reader smell dirt is realism. That is pure juvenility; the same thing that makes a youth visit a brothel in the belief that thereby he is proving his manhood. I should guess that he is an American living in Paris with the excessive romanticism which, in expatriates, always reveals itself in that queer form. But he has obvious power of narration and a certain crude effectiveness in style.

Life here proceeds very peacefully. I have done an essay on the eighteenth century in France,⁴ which I really like, and begun a short piece on the origins of French nationalism which I hope will prove a pretty trifle.⁵ Its theory is that when at the death of Louis XIV ecclesiastical and monarchical authority was utterly discredited, two traditions formerly in obscurity at last reaped their harvest in the philosophic movement. The one is the libertine tradition in which the succession is Renaissance humanism — Rabelais — Montaigne — Saint-Évremond; the other the Cartesian with Descartes, Bayle, Fontenelle as the chief names, the last of these linking the two schools together. I should think that eminently sane as an account of what happened, and perhaps it may tempt a young man somewhere to explore it in detail. I add that I know nothing so good for one's self-respect as a human being as the re-reading of Montaigne and Bayle. They really are absolutely A-1; and the way in which the latter pokes fun with sublime seriousness of face at human credulity in the *Pensées sur la comète* is adorable.

² See, *supra*, pp. 1081, 300, 313.

³ See, *supra*, p. 1081.

⁴ Probably "The Age of Reason," *supra*, p. 1085.

⁵ Not identified.

In reading not too much to record. But I must mention because I have so thoroughly enjoyed them, two books. One is Legouis and Cazamian's *History of English Literature* (in French or English) which on bended knee I pray you to get. It is by all odds the finest account of the movement of literature in England, above all as the expression of its social *milieu*, I have ever read. The chapters on Shakespeare, Milton, Richardson, the 19th century novel, to pick out only a few are really *tours de force* of brilliant compression. If you will only read it, you will bless the day you met me. The other is more sober, *A Short History of Free Thought* by J. M. Robertson which, though lacking in charm and delicacy, tells you and me the actual movement of an attitude we both care about with great learning. I found the history of freethought in Italy and Germany as interesting as it was novel; and his detection of little oases of rationalism in the middle ages and the Reformation is full of all kinds of sudden and arresting *aperçus*. If the idea of it tickles your palate, please let me know, for I doubt whether the book is published in America. I read it in a couple of days and though, as I say, it lacks grace, I could not leave it until I had got to the end. Of other things I have smiled over P. G. Wodehouse's last novel⁶ (less than usual) and read a book sent me by an American lady named Van Doren about New York intellectuals who seem to talk twenty-four hours a day about their need for sexual intercourse with each other's wives and husbands.⁷ I must live in a queerly constricted world for as yet (please mark my respect for the unknown) marital infidelity has merely seemed to me dull and destructive.

We proceed here in a quiet way to infinite enjoyment. Last week we spent a day motoring around Bouillon (of Godfrey of that ilk) and seeing a country there as majestic and unspoiled as I have ever seen. We picnicked for lunch by a tiny river which as it flowed over tiny cascades seemed literally to sing with joy. And it was impressive to stand on the walls of Bouillon and look out over forty miles of country. One realises in these ancient castles on an eminence of rocky heights that only famine could have compelled them to surrender. Their sites are marvellously chosen; and they illustrate most impressively the self-centredness of the middle-ages. Each of them is a good two days' march from anywhere. Then as you pass to the 16th or 17th century chateau you get distances that are obviously meant to imply neighbourliness and suggest the decline of internecine conflict both by their sites (flat, approachable country, usually near a river) and their construction. I was enormously impressed too by the charm of the outhouses round the chateaux — the stables had dignity and grace in a degree one rarely sees in a modern edifice. Please

⁶ Not identified.

⁷ Dorothy (Mrs. Mark) Van Doren, *Strangers* (1926).

realise that I write in entire ignorance of what one ought to know of these things.

We stay here another week and then proceed leisurely home by way of Antwerp, where I always enjoy a good hunt for books. I hope, by the way, that the August number of *Harpers'* was sent to you with a piece of mine I badly want you to read.⁸

Our love, as always, to you both. *Ever affectionately yours, H. J. L.*
This is the only paper I can buy in the one village shop.

Beverly Farms, August 23, 1928

My dear Laski: This marks the moment when I have just finished reading your portrait of Rousseau in the July *Yale Review*.¹ It is beautiful and stirs me deeply. I wonder if in depths of your nature that I have not fathomed there is a corresponding religious fervor for some convictions, notwithstanding your formal scepticism. At all events your subtle appreciations go to my heart. None the less do I repudiate the passion for equality as unphilosophical and as with most of those who entertain it a disguise for less noble feelings. While I know very well that divinations *come before* proof, yet I hate (intellectually) every appeal to intuitions that are supposed to *transcend* reason, all the way down from Rousseau to Bill James. But this is by the way. What I began I end with — you have made a wonderful portrait that gives me delight.

I have had an unmixed vacation feeling since I sent back my last batch of *certioraris*. I doubt if I shall send for more, lest I should tempt destiny to snip my thread. If I made too much preparation for the future, fate might like to wink and say: "Sold." Perhaps my interjected protest was helped by my just having finished a book I began some time ago — *Dill — Roman Society from Nero to Marcus Aurelius* — (a dull, interesting work — like an address to the jury in its eternal repetitions). While showing how much there was alien to Christianity in the air, so that you almost would think a sceptic was talking, he patronises it all from the Christian point of view, as not having intuitions that I should regard as products of ignorance, egotism, and conceit. As I have said before I think man needs to learn to take himself less seriously when he attempts to philosophize.

Just now I have on hand Mallock's *Memoirs of Life and Literature*.²

⁸ *Supra*, p. 1062.

¹ "Portrait of Jean-Jacques Rousseau," 17 *Yale Review* (N.S.) 702 (July 1928).

² William Hunnell Mallock (1849–1923), man of letters and fashion; author of *The New Republic* (1877), *The New Paul and Virginia* (1878), and forgotten novels. His *Memoirs of Life and Literature* was published in 1920.

As in other books he makes me feel that I don't like him — and at the point that I have reached he seems to wish to impress you with what very exclusive society he frequented. Also I have some stories by Chekov lent to me yesterday — and I have sent for Petronius — but ὡς τὰχιστα I purpose to read a novel of Trollope's — as a sacrifice to the Muses. Haldane's death³ moves me — I knew since we both were relatively young — and I thought him a great man — on the strength of his book about what he did before the late war &c. My horizon grows pretty bare. I suppose you will have got back when this arrives — I hope well and in high spirits. *Macte virtute.*

Affly yours, O. W. H.

Beverly Farms, August 26, 1928

My dear Laski: You keep me envying your power to read a book in a wink and to remember what you have read. I suppose that Petronius whom I have taken up just now could be swallowed in an hour. With a translation alongside it will last me several days. To be sure, I hardly read at more than odd minutes. The dead pen is generically of all time but specifically blunter and coarser than what makes us laugh. Do you remember in *Verdant Green* (itself I suppose now antiquated) the student overheard walking up and down and chuckling at some wretched jest of Aristophanes? I believe I expressed my sorrow at the death of Haldane in my last. The horizon narrows. I feel like the prisoner in the room the walls of which draw nearer every day. That is true not only of life but of vacation. In a month I shall be due in Washington. Today there is a dense fog and perhaps for that reason I don't feel cheerful about it. Normally one is glad of vacation when it comes and, in turn, glad to go back to work. Perhaps I should feel better if I had read any book this summer that made a great mark, or if it was a sunny day and the wind not from the South. I have had no conversation to compare with your Belgian artists'. An Indiana judge *et al.* lunched here on Friday, pleasant and discreetly soapy, but nothing memorable.

One of the country people, or rather a couple, leave a mark. He commands a vessel in the winter and works with his wife on her flower garden in the summer. Last winter two voyages to Buenos Ayres, etc. While he was away two police dogs that they kept showed signs of trouble. She shoved her hand down the throat of one thinking to relieve him, then the doctor said it was rabies. I believe she is undergoing some treatment but didn't seem worried at all — but the arches of his feet had given out on ship board, and the rains had destroyed most of his wife's flowers, and the authorities were taking a piece of his land that he wanted for his

³Lord Haldane had died on August 19.

road, and he was blue. I came to know them by stopping to buy flowers at the roadside two years ago, and his melancholy quite took hold of me. I worry easily. I don't know that I do more as I grow older, but less things than that make me uneasy, even a long communication from a crank among a series that the C.J. would throw into the wastepaper basket. But I should give you a wrong impression if I made you think that I was not happy in the main. I have talked more about such things than you ever do. I hardly know whether to apologise or to assume the privilege of age. This letter was interrupted by a call from Reginald Foster. Did you know him? A clever man, who like you reads, as he puts it, down the page instead [of] across line by line like *nous autres*, the worms. He like you reads Trollope recurrently, also Dumas and Scott which last I have done in my time. Now I am expecting a call from my *quondam* secretary, L. Curtis, who lost a leg in an airplane accident while training for the war. Hard lines, which he takes with admirable courage and good temper. I wish I had as interesting things to tell as you do.

Affectionately yours, O. W. Holmes

Beverly Farms, August 30, 1928

My dear Laski: Your letter came this morning and after returning from my drive I wrote to the Old Corner Book Store to see if they could get me in French or English Hazimeau's or Maziarani's or somebody else with a name looking like that (the first name illegible but immaterial), *History of English Literature* — thus having obeyed your behest.¹ It would make me easier to get an improving book. There has been a lack of them this vacation and while I more or less emulate older men who say they now read only for amusement, it is vain. I feel that I ought to be taking in fuel. Although I wrote lately I forget whether I mentioned that Dill the tiresome put me on to Petronius. I think I did. And that has a certain improvement in it as it suggests reflection, verified observations of others, and had a surprising number of quotable sentences, of which of course, I made no note. I do not greatly admire the writers of diaries and the economical noters of their happy thoughts and the felicities encountered in reading. *Ad interim*, I have read some stories by Chekov (qu.sp.?) well told but squalid — not the swinish instinct you attribute to Hemingway, but none the less displeasing to me. I am just rebeginning *Moby Dick*, which I surmise with your boatman of the Meuse to be great.

You rather seem to be defending Lady Asquith against me. Lord bless you — I know her pretty well and I think I appreciate her fine qualities as fully as anyone. The book however did not please me. Unlike you,

¹ *Supra*, p. 1088.

though ignorant, I did enjoy the hunting and horse talk, but the emotional parts and the end seemed to me as if she had not learned by growing older.

Morris Cohen was here at luncheon yesterday and we talked for three hours plus and then at his suggestion I took a rest. I get tired with talking and normally consider an hour and a half my limit. I needn't say that I enjoyed it greatly. He said that he came back to the classics feeling as if he was wasting time with modern books. While I on the other hand always fear that I am wasting time if I dally long with the classics. He expounded an interesting theory of the Sadducees as the national party — the priests and upholders of the theocracy — the Pharisees as reformers, saying that every man might be his own high priest, but still upholding the ceremonial side — and Jesus, condemning the Pharisees more than the Sadducees, foreseeing the downfall of the theocracy (I forgot to ask him whether this attribution wasn't on the strength of words as to which one may take the liberty of doubting whether Jesus ever uttered them) and making it all a matter of the heart, or internal, not ceremonial. Also he had been rereading Kant's *Critique* with great admiration, while of course not accepting the structure. Cohen is a wonderful and noble creature. I will try to get the *Harper*, but your Rousseau in the *Yale Review* is enough for one year.

I thank you deeply for your encouraging words about resignation.

Affectionately ever, O. W. Holmes

Devon Lodge, 2.IX.28

My dear Justice: As you can imagine, I was deeply moved by Haldane's death; one does not dine with a man weekly for eight years without a sense of real affection for him. Heaven knows he had his faults; but he was generous, and warm hearted, and a very great organiser. I remember above all two things. First a talk with Haig in which the general insisted that Haldane alone had made the British army a really efficient instrument and, secondly, a talk with Haldane about amendments to the Trade Union Act of 1927 when he showed a fertility in inventiveness and a skill in drafting which were really incomparable. Only five weeks before he died Mrs. Asquith and Mrs. Webb — as different as chalk from cheese — had both said the same thing to me, that if they were in trouble they would go to Haldane before any other person. We all felt that about him. I add, what you will like to know, that he had immense respect for your work, and followed your decisions year by year with the fidelity of a man who knows the best when he sees it. He always asked for news of you and he always remembered the journey to America with you with quite special pleasure. *Inani perfungor munere.*

We came back last Wednesday from the Ardennes; and except for a week with my people in Manchester (whither I go tomorrow) the holiday is over. But it has been a great time, and I feel as fresh as paint. So much so that I almost begrudge the week up North as it interferes with a piece I have begun to write for the American Encyclopedia of the Social Sciences on the rise of liberalism¹ — a perfectly thrilling subject on which, I think, I can manage to say something new. I sat down to it with the kind of extra-thrill one gets when one feels that the job was really made for oneself; and I only regret that I can't have a real year of leisure to do it amply.

I can't tell you what pleasure your note on my Rousseau article gave me. I like that fellow, even though his ideas make me see red. I like him, I think, because there is something of the child and the exile about him, and one feels that one wants to come to his rescue and make the rough places smooth. I was amused at your struggle with Dill. I got through him out of grim need. But I thought he wrote less as a scholar than as a cleric who knew when he began that paganism was going to have a bad time. Of other things in the reading line I have read Wells's new novel² — by all odds the finest thing he has done in many a year, not quite, but nearly, at the level of *Kipps*; and with an incidental footnote about Felix which warmed my heart. Then an adorable P. G. Wodehouse which I implore you to read — *Jill the Reckless* which is worth the price of admission if only for two lines in it about Omar Khayyam. I beg you to make it the companion of your solitaire. Then a vast tome on administrative law sent me by Freund of Chicago which I thought useful but dull.³

Everyone is away at present; but I must not forget to tell you that a Chinese friend of mine came in to tea yesterday who saw Wu only six weeks ago. He says Wu is very well, and doing excellent work both in the Court and on some codification job to which he has been assigned. My man says Wu talks of a year at Harvard, but prays me to urge the friends of Wu to impress on him the need to stay in China. He says Wu is getting a real reputation there as one to whom important work can be confided and that he will forfeit this if he goes off to some interim research which he does not really need to do. If you have the occasion, you might pass this on quietly but firmly.

I say I have seen no one; but I must tell you of a caller at the School of Economics. He was from the Balkans — I guessed a Rumanian — and I think he was a professor in a technical school. He had haunted the place, the porters told me, for two weeks. He had read my *Grammar of Politics*, believed I was a great thinker, and wished to tell me that I would

¹ *1 Encyclopedia of Social Sciences* (1930) 103-124.

² *Mr. Blettsworthy on Rampole Island* (1928).

³ Ernst Freund, *Administrative Powers over Persons and Property* (1928).

be even greater if I would only realise the need for religion. I was polite to excess, and he stayed with me from 10:15 till 11:30. He spoke of the Atonement, the Resurrection, the New Prayer-Book, Luther, Rousseau's Civil Religion, the death of Socrates; and as he spoke English of a special Balkan type he filled in the gaps with words I dare not try to reproduce. When he left he went on his knees, and I thought he was going to ask me to pray; but what in fact he wanted was to borrow a pound and ask for my photograph. The latter I explained I did not possess; on the former I offered to give him ten shillings on condition he did not come back. This he accepted eagerly, and said that ever since the Battle of Navaimo he had known that the British were a generous people. I was weak with suppressed laughter when he left; and my condition was not improved when the porter told me that his exit was crowned by the need to avoid a taxi-driver who had been waiting for him since 11 o'clock. What a race is mankind!

I hope Maggs's catalogue of engravings reached you safely. It made my mouth water, especially the Rembrandts and that superb engraving of Burke; and I thought you would have pleasure in turning over its pages. Did you see that the Six collection⁴ is to be sold in Amsterdam? There is a Vermeer there I would give all my books except two for; and a complete set of all the Rembrandts bought from him direct by Six.

Our love to you both. Don't do any more *certioraris* until you are back in Washington.

Ever affectionately yours, H. J. L.

Devon Lodge, 18.IX.28

My dear Justice: I have been busy doing nothing this last ten days; hence an unusual silence. We went to Manchester to spend our annual week with my people and I find it impossible to write or think there. One lives in an atmosphere of such luxury that the main feeling which arises in me is that of the poor relation who ought to crouch in a corner. The vital questions turn either on market-movements in cotton, on which my stock of information is small, or on the comparative merits of Rolls-Royce against Daimler — upon which I probably know even less. Frida manages wonderfully by an assumption of knowledge about dress which I am confident she doesn't possess. I feel woe-begone, and count the hours until I return. We made up for it by a delightful week-end with the Webbs where we talked the political world round. Webb told me some interesting tales of Woodrow Wilson whom he visited thirty years ago as a professor at Princeton; and he wrote down in his diary that W.W. would like to be a Virginian Calvin if he got the chance, which was a good judgment for that early period. He told me, also, an amusing story of how

⁴ John Six (1857–1926), descendant of Rembrandt's friend, Jan Six.

Herbert Spencer appointed Mrs. Webb his literary executor just before her engagement; when it was announced that she was to wed the arch-collectivist he wrote warning her that if she persisted he would have to change his will; and his wedding present to them was a set, finely bound, of his writings against the state. We had a pleasant evening on Saturday when Russell came over. He talked, as always, brilliantly; and, I should have said, with less regard to the grim need for fact than any man I have ever heard. But when it came to judgments, his dismissal of Bergson was a superb piece of analysis, and his explanation of the significance of modern cosmology left me with the feeling that any really sensible person would specialise in astrophysics instead of a stupid subject like political science.

In the way of reading, one or two things are worth reporting even though, when you get this, you will, I fear, be on the way back to Washington. First, P. G. Wodehouse's new novel *Money for Nothing* over which I chortled happily until two in the morning. Second, Russell's volume of papers, *Sceptical Essays* of which one particularly on recent philosophy is a supreme piece of exposition. Third, a stiff dose of Hobbes, especially the pre-Leviathan pieces, which left me in raptures, alike for the style and for the superbly masculine common-sense. Disagreement with the foundations noted, he seemed to me beyond compare among English political thinkers. At the Webbs I read Asquith's *Recollections*, but beyond one or two amusing tales, it seemed to me very thin stuff. It reveals what one would expect, a solid and loyal nature, but not, I think, any distinction of mind unless a power of grave and lucid statement is distinction of mind. He makes one feel that he was immensely superior to most of his colleagues, but also that it was not remarkable to be so superior. And curiously enough, the best thing in the book, by all odds, is a letter to him on his resignation from Baldwin, a model of exquisite feeling expressed with a delicacy rare among politicians. I must not forget to add one thing culled from the pages I turned over in Manchester. Fallières, the French President,¹ visits the studio of Rodin and is told that he should make a polite remark to the great man. He gazes around the studio and notes the plaster-casts, torsos etc. His eye lights up, and he says with great energy to Rodin, "I see, monsieur, that you, too, have suffered much from removals."

I have found nothing in the way of books to buy since I came home. But I have done one thing that has pleased me much. I sold my desk, and bought instead a nine-feet oak refectory table of the 17th century, and, for papers, an old oak chest beautifully carved. So my study looks as though the books and furniture had grown up together and I have a

¹ Armand Fallières (1841-1931); politician and President of the Republic, 1906-1913.

pleasant sense of aesthetic adequacy. Now I hope to find half-a-dozen old prints of Hobbes, Locke and Selden and such like to finish off the walls.

I have not, I think, told you of my interview last Friday with the American gentleman who wished to see me urgently. He had just returned from Geneva, and was mightily impressed by the League. But he felt strongly that it was handicapped for lack of funds, and in the present state of Europe, more money was unlikely. So he proposed to compile a great volume of autographs in which all "the illustrious" living should put their names, and this was to be raffled at a pound a ticket, the proceeds, less expenses, to go to the League. He wanted a secretary to collect autographs in each country and thought I might act for England. I told him I was no good and that for access to the illustrious he could not possibly do better than get into touch with Nicholas Murray Butler. I hope he really starts his project; it is too divine to leave as a mere thought *in abstracto*.

I have three more weeks of peace; and I suppose you are just bidding farewell to the red-gold of New England autumn. Here we enjoy summer sunshine, and in Surrey, the beeches are still a vivid green.

Our love to you both.

Ever affectionately yours, H. J. L.

Devon Lodge, 2.X.28

My dear Justice: I have been ruthlessly driven — hence this silence. Two long cases in the Industrial Court, a week-end conference in Cambridge, (with two speeches to make) and two lectures to some five hundred working men in Peterboro' have stolen some precious hours. You will understand and forgive.

Cambridge interested me much, the conference apart. I stayed in Trinity and sat, the first night, next to a world-famous astrophysicist. In conversation it emerged that (I) he thought all Catholics wicked because of Galileo's treatment (II) that modernists in the Church of England ought to be ruthlessly expelled for heterodoxy. I suggested that there was a slight confusion of mind in the two statements; but not forty minutes' hectic discussion would make him see any illogicality. On the second night I sat next to a most eminent bishop. He explained to me that Christianity was the hope of the world. He himself did not believe in (I) the Incarnation (II) the Atonement or (III) the certainty of an after life. I suggested that he was not a Christian in any sense of the word to which meaning could be attached; this he repudiated with violence. On the third night I sat next to an eminent judge. He told me that his great desire was to see the study of Roman law made compulsory for all students for the bar as nothing else was so good a discipline for the legal mind. In

conversation it developed that Muirhead's text-book¹ was the only book on the Corpus Juris he had ever read and the text itself was, I think, quite unfamiliar to him. I mentioned the case-system with appropriate eulogy. He dismissed it with contempt because the student who studied disconnected cases lost sight of principles. Now here were three really eminent men not one of whom could pretend to logic outside a narrow realm of technique. Is there such a thing as general intelligence? Please note that I enquire and that I do not decide.

With the workmen of Peterborough I had one thrilling experience. An old engineer came up to me and explained (with a strong Scotch accent) that he read philosophy. Could he ask me one or two questions? I suggested an adjournment for a cup of tea and a gossip. He then proceeded to show a quite amazing knowledge of English philosophy, even quoting Mill's *Examination of William Hamilton*. He was nearly eighty and the whole urge to this study came from an accidental meeting with Thomas Davidson who, you may remember, started off Morris Cohen. The old man was enchanting — one of those hard-headed Scottish secularists who proved ruthlessly step by step. Did I believe orthodox religion false? Did I think falsity ought to be exposed? What steps did I take to expose falsity? It was like listening to a prophet when he explained the evil effect of faith upon the working-class. And he said to me as we left, "If there is a God, I shall say to him, 'Lord, pardon my unbelief, but I had too much self-respect to accept thine appointed instruments.'"

In the way of reading I have read one or two things amply worth while. Above all, Allen's *History of Political Thought in the 16th Century* — the book I like to believe Lewis Einstein would have written if he had not given up to the State department what was meant for scholarship. It's a fine book, and especially on Machiavelli, Hooker and Bodin, I believe of quite fundamental importance. If leisure comes at all your way I do hope you will send for it from the Congressional Library, for it is brilliantly written and will, I am sure, give you some happy hours. Then the last volume of Curzon's *Life*, quite interesting because not even an admirer like Ronaldshay can prevent him from emerging as other than definitely unpleasant. And a book on *Pascal* by one Chevalier, a professor at Grenoble, which I thought as good in its way as anything I have read. He did what one so rarely sees done — explain in detail the worldly Pascal as well as the theological-mystic. And another sheer delight which I beg you not to omit, beg you earnestly, for in the night-train it kept me passionately interested — an admirable life of my dear Hazlitt by P. P. Howe who has done it so well that he is never to be sufficiently praised.

¹ James Muirhead, *Historical Introduction to the Private Law of Rome* (1886).

And all he says is what he ought to say — that is, you emerge feeling that the post-1820 Wordsworth is a seventh-rate Stiggins, and that not ten men in the world have been more completely adorable than Lamb. Hazlitt took me to the *Autobiography* of Leigh Hunt which has just appeared in a cheap edition (World's Classics). And that is another gorgeous thing — a book to read aloud if ever there was one. I must, too, commend a novel — *St. Christopher's Day* by Martin Armstrong. I won't spoil a hope that you may enliven solitaire with it by reflection except to say that it accomplishes one of the most difficult things in the art of narrative with what I think is a signal success. But above all, I entreat you to read the Hazlitt. I wish I had not, so that I could have the pleasure of beginning it afresh all over again.

Term begins a week today, and I am taking the last gulp of freedom a little sadly. For there's so much I want to do before term begins; and with a full uninterrupted day one can find out so much. Today, for instance, a careful comparison with Bodin has revealed to me that Montchrétien,² usually acclaimed as the founder of political economy, has, in fact, taken 300 pp. wholesale from Bodin, merely inverting the order of B's remarks. And in the books this unblushing plagiarist is exhibited as supreme originality. One editor of his *Treatise* actually says that he is as good as A. Smith. A good American professor (who had plainly never read him) says that his book is the first since Aristotle to deal clearly with the place of economics in statesmanship. So I hope to have some kindly but firm footnotes in my chapter on economic thought in the 17th century.

But, say you, why should I have to read of Montchrétien (of whom I have never heard) and his debt to Bodin (whom I will not read) when I *must* go through *certioraris* and write a dissent! I apologise. But most sins are the consequence of affection, and mine for this job is endless.

I send my love to you both as always. So would Frida were she not away.

Ever affectionately yours, H. J. L.

Devon Lodge, 9.X.28

My dear Justice: In the midst of term I cry unto thee. For a week I have been drowned amid students, of all colours and races and nationalities. It is exhilarating, but it makes me want to retire. If a kind American Foundation sent me a cheque for twenty thousand pounds I should take a cottage in Hindhead and write there for the rest of my life. But I am full of good works, and never, I think, nearer to salvation than just now. Which reminds me that we have a new member of the staff — a geog-

² Antoine de Montchrétien (c. 1575–1621); author of *Traicté de l'economie politique* (1665) who christened but did not sire political economy.

rapher — whose induction to our mysteries is worth recording. He is a fervent Baptist and at dinner was offered some port by Hobhouse. "I would sooner commit adultery" said the Baptist. "So would we all" said Hobhouse. Can you produce a finer retort than that?

As you can imagine, with term and its attendant committees I have had little space for other things. But I sneaked in a jolly lunch with Arnold Bennett who, *inter alia*, said (I) that the average of American fiction is, at the moment, higher than anywhere else in the world (II) that Dostoevski is the greatest novelist as a technician (III) that Proust is a snob writing for snobs and (IV) that he received an earnest letter from a clergyman urging him to write a novel helping God to the victory. A.B. replied that he had no knowledge of how to set about it, to which the reverend gent replied that if A.B. would supply the art he would supply the theology and that he would not ask for more than one-third of the profits. And I went to a jolly dinner with my colleagues on the Industrial Court to which we had Sumner as guest. He was very interesting with reminiscences of some of the old judges, especially of Bowen (whom he put first among the 19th century) and Blackburn. The latter told him that when the offer of a judgeship came along he was doing so badly that he had thoughts of giving up the bar and becoming a solicitor! And Frank Pick, the manager of the Underground,¹ told us of a group of men at a station who asked for an increase of pay on the ground that they had recently increased the number of arrests for pickpocketing in their station by fifteen per cent!

Of reading I have little to report. I read one excellent novel (*My Brother Jonathan* by Brett Young) . . . But mostly I have been reading things connected with my lectures and not finding that I have much that is genuinely new to say to what I have said before. On the other hand I have been reading in odd moments the essays of Emerson, and I want to sing a palinode about him. He is infinitely better than I ever imagined or admitted and the ripe wisdom of his aphorisms (I mean aphorisms and not epigrams) seems to me unsurpassed in any writer of English prose. Indeed I should say that of all Anglo-Saxon people he is nearest to La Rochefoucauld in his uncanny skill of being able to put a year of experience into a phrase. I don't think he has ever had his deserts; but that may mean that in the past I have always thought eulogies of him excessive through my own blindness to his merits. I have bought some pretty things, of which the most pleasant is a collection of about a dozen contemporary attacks on Montesquieu, one or two of which are able, but all of which are interesting because they show that to his own generation he was really caviare. What they appreciated was not the philosophic

¹ Frank Pick (1878–1941) was for many years associated with Laski on the Industrial Court.

outlook, but either the *esprit* or the discussion of early French constitutionalism. And I got also a fine engraving of Hobbes in which the old gentleman looks quite the most benign philosopher who ever threw a monkey-wrench into the philosophic works. He hangs now next to a picture of Rousseau and the contrast between his sweet complacency of feature and the malignant uneasiness of Rousseau's expression is very striking.

Of other things there is but little to say. Felix bombards me with literature upon the election campaign on which I have only the distinct impression that I like Smith and dislike Hoover; but upon his own activities he is silent and I am much more interested in them. One student who has come over from the Law School talks of him, to my joy, as easily the most respected teacher there. I have been interested, too, in a certain current of criticism that comes to me of Pound — how true I know not — but which in sum suggests the dawning sense that the mere amassing of materials and the refined separation of categories does not make a new jurisprudence. To one such I ventured the dictum that Morris Cohen was the outstanding legal theorist in America and found, to my pleasure, that a sense of this as a possible truth was not outside my visitor's powers of credence. But he queerly felt that poor Morris did not deserve the reputation I had given him because he had not written a *book*. My visitor, I add, spoke of anxiety felt at the Chicago Bar lest you be tempted to resign. He said he hoped you would go on without any fear that you had outstayed your welcome.

Our love to you both. Take care, please, and remember that life is even greater than *certioraris*.
Ever affectionately yours, H. J. L.

1729 I (Eye) Street N.W., October 11, 1928

My dear Laski: As a previous letter predicted, I, like you, have been filled with work till the cup overflowed. Unlike you I have had no amusing incidents to put a fizzle into it. I thought I had done well in polishing off 125 *certioraris* in vacation. But when the term began there were near 250 and the Chief wanted to dispose of them all at once — with dramatic pauses in the announcement to meet the invincible scepticism of the Bar, that won't believe that we each and all examine every one. The result for me I have indicated. Some of the JJ. are ready — some worked late into the night, which I won't do, but I managed to be able to recite on all but 3 — which didn't matter. Now we are hearing arguments, and the new *certs.* that came in on Monday are done. The papers got hold of the fact that this month I have reached a greater age than any judge who remained upon the Bench since the Court began — which has added letters

to be answered to the other chores. It doesn't look much like reading your books at present. I have given a note of them to my secretary to be called to my attention if leisure comes. I have read your piece in the *Bookman*.¹ As you know I think you tend to confuse the necessary point of view taken by Courts (called Austinian by way of belittlement but really the only possible view for them) with ethical or social theory. As to this last you know that I also disagree. I don't know anything about the right of every man to an equal share on chances — that doesn't seem to me the order of the universe — and I am far from believing that man has in himself an independent fulcrum from which to react against that order. Of course it is open to you to prophesy that yours is the next step in the organic movement — but I don't bother much about prophecies as my time must be very short.

At odd minutes before and after coming here I have run through Philip Littell's *This Way Out*. He has an amusing pen and in his shorter pieces has written sentences worth a week off the end of one's life. This seems to me a little too much for the theme. It is Adam and Eve in the Garden — with diabolic accompaniments in the form of a parrot, called Paul, (Apollyon), a stork, &c with occasional messages from "Jovah" — it would seem incredibly blasphemous to a fundamentalist, and seems, as I said, a little too detailed for an outsider. It leads up to the discovery of the function of sex indicated and predicted but not indelicately detailed. There are very amusing touches. One of the Mephistophelians — Lucifer I think, takes a cigarette and lights it by breathing through his nose on the further end. Lucifer also gives an account of how he drafted a petition which 92% of the workers signed, and notwithstanding Jovah's reply that the works couldn't go on with the proposed hours, the new arrangement was made for 9 hours adoration instead of 12 — and that fatigue, which formerly had set in at about the 9th hour, was virtually eliminated and production costs instead of increasing were lowered by 7 4/10% — "a saving we passed on to the consumer. The output was larger, the production was of better quality. Grade A adoration was before long the order of the day and night." Enough of this — I thought it might amuse you from one of your cooperators in the *New Republic*. I don't see but that sheet has become as frankly partisan as any party paper. But though Croly is a thinker he is not a writer and I skip his pieces. Butler told me a tale today that pleased me. Walker the mayor of New York was asked to come to a meeting just about to take place. He said he'd come if they wouldn't ask him to speak. They promised and of course the promise was broken — so he rose and said "Ladies and gentlemen, as Marcus Antony said when he entered the boudoir of Cleopatra, 'I didn't come here to talk.'"

¹ "The Crisis in the Modern State," 68 *Bookman* 182 (October 1928).

Apropos of what you get about Lamb from Howe's *Life of Hazlitt* I dare say it is true in a sense — and I dare say that Carlyle's description of him as a snuffy, dingy, person is also true. So also I agree to any language of delight in his essays or letters — yet when I went through them I felt as I used to feel when working in the old Law Library and saw the scenery that had charmed me on the stage the night before run out through a slot in the wall and loaded on a cart. But I have drooled long enough. Your letter rec'd this morning was delightful.

Yours affectionately, O. W. Holmes

Washington, D. C., October 19, 1928

My dear Laski: Your report of your latest experience comes this morning and brings the usual pleasure. The tale of your Baptist colleague and the glass of port is superlative. I have heard nothing corresponding, even though it would call a blush to the cheeks of innocence from my colleagues; though Sutherland and Butler maintain a good average. The tension of work grows a little less. I have written my first opinion and it has been approved by all but Sanford who was the other way *ab initio*.¹ I felt a queer nervousness until I got it back, lest it betray some symptom of decline that I had not noticed. But I always have a nervous apprehension that someone will discover a chasm, until I get the opinion back. For the moment I am cheerful. I am delighted at what you were told about Frankfurter. My secretary² agrees, subject he says to a different kind of respect felt for Williston,³ which is easily understood. Williston is a delightful creature, and admirable in the regular ruts. Frankfurter brings fire and invites to new adventures. I have just run through a little brochure by Zimmern on *Learning and Leadership*, at the beginning with some coolness, at the almost indefinite Oxford exquisiteness and at the readiness of the scholar to offer schemes for the world, but in the end with delight in his discourse on the relation of ideas to action, a subject that always stirs me and on which he talks nobly. He is a fine creature, but I should doubt whether he had quite found his proper place in the world. Only a few days ago did I discover that you had sent me Bentham's *Comment on the Commentaries*, for which, warm thanks. No time to read it yet. A number of other books also encourage me. *Liberty in the Modern World*,⁴ essays by people ranging from John Dewey and

¹ *Maney v. United States*, 278 U.S. 17 (October 22, 1928).

² John E. Lockwood, now a practitioner in New York, had graduated from the Harvard Law School in June 1928.

³ Samuel Williston (1861–), beloved Professor of Law at Harvard, 1890–1938.

⁴ *Freedom in the Modern World* (Kallen, ed., 1928).

Chafee to Clarence Darrow. Lewis, *America, Nation or Confusion*. Sir Siraswamy Aiyar, *Indian Constitutional Problems*. What seems an entertaining little book sent by Mrs. Brandeis — *The Russian Land* by Albert Rhys Williams, etc. not to speak of articles including one on Legal Sciences by the, I suppose, great Kantorowitz.⁵ Damn them all but one or two. You speak of Morris Cohen as an outstanding legal theorist. As you know I regard him with affection and reverence, but I hardly am aware of anything that I have felt to be a great contribution to legal theory. Like Henry Adams to someone who said that he had been with Charles and found him delightful — “You found Charles delightful? You interest me.” I suppose I may as well make up my mind that I am an old fogey, and sit down, but there is little legal theory that strikes me as worth talking about.

One week more of arguments and then there may be some repose. I have not known this feeling since I got here.

Ever affectionately yours, O. W. H.

Devon Lodge, 16.X.28

My dear Justice: Life flows on merrily, and the term so far has been far more peaceful than I ever dared to hope. I have a new assistant to relieve the pressure, with the result that I have been able to get all my work concentrated on three days each week so that I confront the unwonted experience of real leisure in term-time. And that really means that I can work happily and uninterruptedly for four days each week. It feels quite wonderful and leaves me happier than I have been in years.

Of news there is not a great deal, for the first fortnight in term is always swallowed up by students. But we had a jolly dinner on Sunday with Nevinson as the guest of honour (his 71st birthday) and as he gazed upon your photograph he said “Tell him that if ever my faith in the United States falters, I think of him and am comforted” which I report because I agree with it. And to tea on Sunday we had a Californian professor by the name of Kirk¹ (whom I know not otherwise) who said of you that for him and many of his colleagues your opinions were a source of permanent inspiration. So that you can feel how wide and deep is the sense of the ideas you have contributed to men of the most diverse experience.

The most interesting thing that has happened to me since I wrote last is for *your very private ear*. I got on Saturday a sudden summons to

⁵ Herman Kantorowicz, “Legal Science — A Summary of Its Methodology,” 28 *Columbia Law Review* 679 (June 1928).

¹ Probably William Kirk (1880–), Professor of Sociology at Pomona College.

Downing Street and went quite bewildered as to its purpose. When I got into the P.M.'s presence he said with extraordinary kindness that he had followed my work with great care and wanted to offer me the secretaryship of the research committee of the cabinet with a salary about three times what I earn now. My breath was taken away and I said that I must have a day to think it over. After talk with Frida I went to see him this morning and declined it. For it would mean (I) that I could write no more (II) that I should research into things I might not believe in and (III) that my hands and tongue would be tied. He was extraordinarily kind and said he regretted it as much for his sake as any other, that Haldane had urged it strongly and that he knew no one more fit for the post. Then he urged me to go in for politics and tried to explain to me that I had a big career there. I was very moved by his kindness, but, of course, without a shred of doubt that what I am doing, especially with the independence it connotes, was five times more worth while than any official job. He could not have been more kind and I felt that after all the mere offer was some little justification of what I have been trying to do. I wish I could picture to you his extraordinary kindness both in what he said and the way in which he made his offer. But I'm quite sure I was right. It would be appalling to be silenced and not to be able to work with the people and the things I really care about. Liberty once felt is too precious to make it worth while to go into harness.

This little squeal of triumph must be forgiven me. I add to it (I know you will want to share in the things that please me) a letter from Meyerson, (the best of French philosophers) telling me that he had read what I wrote in the *Yale Review* about Rousseau and that he was really moved by it. I suppose all flesh is heir to flattery and I was enormously pleased.

In the way of reading, one or two things are worth recording. Item, I have read with immense pleasure a book on *Metaphysical Foundations of Modern Science* by one Burt of Chicago, which I thought a first rate piece of work, well-written, thought provoking and learned. And I read a novel *My Brother Jonathan* by Brett Young which, for some unexplored reason, moved me greatly and unlike most novels, made me feel that we underestimate in life the "pull" of personal influence as a factor for good. And I read one book which with all its crudities had much merit in it *The Rise of Learned Societies in the 17th Century* by an American lady (apparently dead) named Ornstein. I also read Charley Merz's book about America called *Bigger and Better Murders* but, as I feel about most books on America, I thought it suffered from excessive simplicity. Of other books I read in the train a volume of Stevenson's letters and loathed him as a *poseur* who enjoyed invalidism and made the supreme use of it for publicity purposes. And I mention because honour commands it one perfect book by E. Villey called the *Sources of Montaigne*. It is a superb

tour de force for not only does it explain Montaigne as no other book I know but it is by a man blind from birth who is dependent absolutely on others both for reading and writing — an amazing record.

And I have bought one thing that pleases me. A first edition (only edition) of Crucé's *Nouvelle Cynée* (1623) for a hundred francs, the first book pleading seriously for the organisation of Europe for the purposes of peace. I bid also for a Rembrandt etching (a little boy) in the third state. I risked eight pounds — a sudden cheque from the publisher — but it brought nearly eighty and I realised that Rembrandt is not for the likes of me.

I suppose when you get this you will be scrutinising a new President.² I am not greatly moved either way. I like Smith's speeches, and I dislike Hoover *quâ* person; and as Smith's election would please Felix I am for Smith. But that isn't very intelligent.

Our love heartily to you both.

Ever affectionately yours, H. J. L.

October 24, 1928

October 21, '61 — (67 years ago) was Balls Bluff
My dear Laski: Your letter just come starts the day with joy. I am really delighted at the offer made to you by the P.M. You deserved the recognition and it makes me happy to know that you received it. I also confidently believe that you were right in declining, although I don't suppose my judgment to be worth much, except as to the general principles. I also am glad at the letter from the illegible French philosopher about your article on Rousseau. I wrote to you to this same effect some time ago. I was moved as he was. Also I thank you for the kind reports as to myself. Eternal doubt is the fate of old age unless it slumps into self-satisfaction! I suppose that I never shall see Nevinson again, but I wish that I might.

My wife showed me the other day an account of an interview with you — *inter alios* — in which you are reported to have said that you found President Wilson easy to work with. I did not know that you ever were in contact with him. When and what was it?

I have no reading to report except records. I wish that I could creep along upon — I can't say your tracks, for you fly — upon your lines of travel. There is a tale from Brandeis that Miss Norton (Charles's sister)¹ is or was (I think she is or was 90 or more) a great authority on Montaigne, as to whom you tell me a wonderful story and that this is a translation in 4 fat volumes with prefaces or headings or something supposed

² On November 7 Herbert Hoover defeated Alfred E. Smith in the Presidential election.

¹ Grace Norton (1834–1926), author of *The Spirit of Montaigne* (1908) and editor of *Montaigne's Essays* (3 vols., 1925).

to be by her. But I don't want fat volumes or a translation. The book you mention I should like to see.

I am just in the suspense incident to having circulated an opinion in a case, where we stood 5 to 4 after a reargument.² I have not yet received the assent of my 4. V. and Br. have answered — the rest not yet. It is a case that could be decided either way but one in which most of the arguments against my view I thought drool. I hope I didn't show it too freely — but I am nervous.

I wish I could tell you some tales like those you sent me, but I am too much a recluse to hear any. How one is bothered by past civilities — people to whom one has been polite write that the Venerable Archdeacon A or the Chief Justice B is in one's neighborhood and that it would be nice if you were to do something. I just settle back and do nothing. The Supreme Court is called upon before it calls, and if and as they don't know enough to call I let them slide down the ringing grooves of time. But such things are bores and tax the nerves. Then a woman whose husband one knew once in some correspondence writes that she is ill and hard up and can't I contrive a plan for her relief. Answer no I can't — with a check, but it makes me uncomfortable for weeks.

I began this letter joyful this morning. I send it grumbling after a day in court but things are not going badly. *Affly yours, O. W. Holmes*

Devon Lodge, 28.X.28

My dear Justice: A delightful letter from you was welcome beyond words; and I note your emergence from stacks of *certioraris* with calm joy. I have been pretty busy, but I have now got the term well organised so that I have time to read and write a little. I have not been out much, though yesterday I did an amusing thing by going to Canterbury and speaking to the Dean and Chapter on the problem of Church and State. I left them, I hope, thoroughly uncomfortable by arguing (I) that a church which claims to be under the lordship of Jesus Christ cannot take its doctrines from the King in Parliament (II) it ought therefore to be disestablished. Some of the canons obviously trembled for their delightful houses; and when I saw the Deanery with its Tudor-panelled rooms, its sixteenth century portraits by Holbein, its 17th century by Van Dyck and Lily, its 18th century by Reynolds and Gainsborough, I thought I understood why even the difficulties of establishment are endurable. I had also a jolly political

² *Boston Sand and Gravel Co. v. United States*, 278 U.S. 41. The majority held that under a special statute authorizing a particular claimant to sue the United States for the recovery of damages suffered in a collision with a naval vessel, interest should not be included in the award. Sutherland, J., delivered a dissenting opinion in which Butler, Sanford, and Stone, JJ., concurred.

dinner at the House of Commons with MacDonald where I heard men speculate on the next cabinet in that curious way politicians have. Jones won't do because he has a bad temper. Brown we can't have because he tells everything to his wife who is even more indiscreet, and so on. It's an attractive game; but it amused me even more to note that each of the guests was most careful to assume that *his* claims could not be passed over and that he slept, so to say, with office as his bedfellow. Strictly *entre nous*, you will be interested to hear that Sankey L.J. is almost certain to be the next Labour Chancellor. Personally he would be an admirable appointment, but deep as is my affection for him, I should be very sorry to see a judge taken off the bench to have office. It would mean the stirring of undesirable ambitions among many who have now ceased to be politically-minded. I went also to hear a day's evidence before the Police Commission¹ and listened with amazement to the Police Commissioner say that the force is quite perfect and that things like the third degree, illegal questioning, etc. only occur in America. What the commission thought I do not know, but the witnesses I heard were quite incompetent for their jobs if they still thought that fairy-tale true after such things as the *Savidge* case. And when I heard a police inspector say that a witness can make a statement continuously for 13 hours without undue fatigue my eyes were certainly wide open. I went, too, with Frida to hear Mrs. McPherson, the evangelist from Los Angeles.² She spoke in a hall for ten thousand — about 600 people were present. She aroused no enthusiasm at all, and what she had to say, in a hard, metallic voice, was never even commonplace. The most amusing thing was the presence on the platform of a famous English music-hall actress who is just cited as co-respondent in a notorious case; the lady evangelist chose her to lead the hymns which seemed curious in a fundamentalist assembly. But then I am ignorant in these things. I must not, *inter alia*, forget a visit I had from an old school friend who is now classical master at a great public school. He got a double-first at Oxford and every classical prize in sight. He came to tell me that he was about to resign, in order to devote himself to the British-Israel Movement — an organisation which lives to show that the British are the lost Ten Tribes and insists that the Pyramids contain a detailed forecast of the future, e.g. another world-war in 1948; a great disaster in New York in 1962 etc. All this he told me with the calm simplicity of absolute conviction, leaving a vast bundle of literature more incredible than any I have seen. And he is a superb classical scholar whose sceptical critiques of the supposed Epistles of Plato are, I believe, considered first-

¹ See *Report of the Royal Commission on Police Powers and Procedure* (1929), *Command Papers* #3297.

² Aimee Semple McPherson (1890–1944); sensational in faith, in manner, and in personal life, her great successes, not surprisingly, were in Los Angeles.

rate even by scholars like Jager [*sic*].³ I tried to find out the cause of this aberration but quite vainly. What he wanted from me was introductions to MacDonald and such like people whom he might warn of the truth before it was too late. I tried to be kind, but, of course, he took my refusal hard, and I felt that he left with the sense that I was a lost soul incapable of the higher ideals.

In reading, one or two things have come my way I have really enjoyed. First a really brilliant American novel — *The Strange Case of Annie Spragg* by Louis Bromfield which I conjure you and Mrs. Holmes not to fail to read. Then a work by one Brandt, a Dane writing in English, on Hobbes's *System of Nature* which is very learned and a real key to all sorts of unexpected avenues of 17th century thought. And a book by an old student of mine (Belasco) called *Authority in Church and State* which is a singularly moving account of the early Quakers and their political philosophy. I read, too, the *Memoirs* of Benes, the Czech who helped Masaryk found Czecho-Slovakia. He was a brilliant fellow to whom truth and honourable dealing never seemed especially important; and I was amused by his confidence at critical moments that "philosophy of history" necessarily meant that things would turn out just as he wanted. It is a comfortable feeling to know that as you take each step inexorable fate is on your side. I have, finally, been reading A. E. Taylor's *Plato* which is entirely remarkable — easily the best general book on Plato I ever read. On some points I am doubtful *e.g.* his view of the *Laws* as the finest piece of political thinking Plato ever did. But I got enormous pleasure out of it.

And as the catalogues have begun to come from the booksellers I have picked up one or two things. The nicest is a perfect copy of *Le nouveau Cynée* (1623) in a charming old morocco binding. But nearly as nice is an Elzevir Tacitus in red morocco and as new as the day it was printed. I found, too, a good copy of the Hume-Rousseau letters which belonged to that queer old fellow Lord Kames,⁴ and a one-volume edition of the works of that gloomy anti-democrat Fisher Ames⁵ which belonged to Robert Lowe⁶ who has marked all the anti-populace passages vigorously, obviously, I expect, with a view to their use in the House of Commons.

Well! When you get this you will have a new President. Felix sends me weekly eulogies of Al Smith and certainly he seems infinitely more

³ Presumably Werner Jaeger; *supra*, p. 889.

⁴ Henry Home (1696–1782), Lord Kames; Scottish judge and philosopher whose *Essays on the Principles of Morality and National Religion* (1751) was an attempted refutation of Hume.

⁵ Fisher Ames (1758–1808), Yankee Federalist whose every instinct and prolific pen were dedicated to the war against Southern Jacobins.

⁶ Robert Lowe (1811–1892), Viscount Sherbrooke; politician, whose greatest parliamentary achievement was effective leadership in opposition to Lord John Russell's Reform Bill in 1866.

attractive than Hoover. But I am afraid that I shouldn't vote for either of them if I were an American.

Our warm love to you both.

Ever affectionately yours, H. J. L.

1720 I Street, N.W., November 13, 1928

My dear Laski: A moment's breathing space and I turn to you. We are adjourned and my work for the moment is done. My last case, given on Saturday evening (it now is Tuesday), has been written, printed, distributed and returned approved by all but one, who I don't doubt will approve it.¹ I have gone over the *Cert.*'s that will be presented when we come in next Monday and I have just this minute sent round a little dissent.² I can't think of anything more to do to make myself virtuous and disagreeable. I even have had time to read a good part of Warren's new book *The Making of the Constitution*, which is excellent, and so far as I can judge finally smashes the humbug talked about the economic origin of the Constitution. I thought Beard's book on that theme³ a stinker, for all its patient research. For notwithstanding the disavowal of personal innuendo, it encouraged and I suspect was meant to encourage the notion that personal interests on the part of the prominent members of the Convention accounted for the attitude they took. Warren has the sense to realize that some men have emotions not dependent on their pocketbooks and brings out very forcibly what I don't doubt were the real dominant motives. Einstein (our minister) was here for a short call and away. He left a volume of *Sceptical Essays* by Bertrand Russell, which entertain so far as I have read, but seem rather light stuff. I suspect B.R. of being a sentimentalist disguised as a sceptic. E. also left an account of Hoover written by himself (Einstein)⁴ that made me realise that Hoover was very nearly, and not improbably quite, a great man. I was glad he beat Smith, though there has been a sort of fad among the New York highbrows (*New Republic*, Dewey, Cohen, FF *et al.*) to blow Smith's horn, on what seemed to me very inadequate reasons. But in these days *The New Republic* is a partisan like the rest, so far as I can see. My regard for some of its leading spirits makes me keep up my subscription but I should almost like to drop it. I shouldn't like to tell Frankfurter.

It's queer what an effect necessity and desperation have. This last case of mine, a little matter of statutes as to pay of some officer in the Navy,

¹ *United States v. Lenson*, 278 U.S. 60 (Nov. 19, 1928).

² *Liggett Co. v. Baldridge*, 278 U.S. 105 (Nov. 19, 1928).

³ Charles A. Beard, *An Economic Interpretation of the Constitution of the United States* (1913).

⁴ Lewis Einstein's "Hoover," 130 *Fort-Nightly Review* 577 (November 1928).

found me in hopeless confusion at the end of the arguments and at the conference, but after I was locked up with it and had to write it, everything seemed to clear up (as far as possible upon a matter inherently doubtful because of obscure language). As I have told you before, I dare say, when you go right up and grab the lion, the skin comes off and it is the same old donkey that you know so well.

Did I mention three little Chinamen making their appearance, sent by Wu? They came and sat silent in my library while I made desperate efforts to talk with them and to say something that they might care to hear. They are at the Washington University Law School I believe, and I feared that they didn't know very definitely what they wanted and weren't getting it. They vanished and I have heard no more. What the devil can I do in such a case? If you know, tell me. Little things worry and bother me I suspect more than when I was younger.

This book of Warren's will take the few hours that I have available, but I wish at such moments you were at hand to give me a hint. Russell has spoken so of Watson's *Behaviorism* that I feel as if I ought to read it at once, in spite of the prejudices that the title raises in my mind. Philosophy always has the right of way, the rest is incident, and *that* I don't believe, with which summary I bid you *adieu*.

How mistaken the notion that one ought to be doing something. It bothers me all the time, and when I take a drive through enchanting colors I find it hard to say to myself with conviction, this is life, this is self-justifying as an end. I don't feel quite right till I turn off a decision.

Affectionately yours, O. W. H.

Devon Lodge, 13.XI.28

My dear Justice: I feel a pig for having allowed a fortnight to go by without a letter; especially as I have had two of real delight from you. But I have been working hard at that article on 17-18th century political thought, and it is only just done.¹ Though I say it who shouldn't, I think it is really interesting, and I only wish that instead of ten thousand words, it had been double, for I could then have said in detail things worth saying, *e.g.* Bossuet's dependence on Hobbes, that I could only hint at. However, you shall see it one day and, I hope, approvingly.

I can't imagine where your reporter gets any connection of me with Wilson from. I saw him twice in my life: once in Washington in February, 1918 and once in Boston in March, 1919, in each case for an hour. I imagine the gent. has either got me mixed up with someone else or misunderstood some remarks of mine that I don't remember making. I

¹ Perhaps "The Age of Reason," *supra*, p. 1085.

add that I was (I have no right to be) a little disappointed by your presidential election. I was glad to see the solid South go at last,² and I assume that Hoover is a really able person. But I wish he had said something, for I like a bonny fighter in politics and there seems an unpleasant dourness about him which makes me a little uneasy. However, these things usually work themselves out. I should gather from Felix's lyric in the *New Republic* that he expected a very different result.³

Of other things my hermit-like existence this past fortnight has not given me much chance to know. I had a pleasant dinner with Allyn Young, the economist, at which I met one T. S. Adams of Yale,⁴ (a specialist on taxation) who spoke with great warmth about you; and a very pleasing dinner with Henderson,⁵ who represents us on the Reparations Commission at Paris and had many pleasing stories to tell. The best, I think, was of a Normandy peasant who came to ask whether there was any chance of the Germans paying in full, as he had a good chance to pick up some of his neighbour's claims cheap, and he was prepared to offer the commission a discount for cash. Henderson said he stayed hours, explaining to everyone that this was the chance of a lifetime. And I must add a story told me of a Jew who found himself in a town where he was entirely unknown. This seemed to him a great chance to eat some ham as he had never before tasted it owing to fear of detection. He ordered some and was just about to put the first piece in his mouth when a terrific thunderstorm broke out. The Jew shrugged his shoulders, put the plate away and said to heaven, "Oh, well! if you object, you object." And I must, I think, tell you of my colleague Beales⁶ who had a Chinaman to interview. The latter's English was poor and it was not easy to follow just what he wanted. At last Beales made out that it was a lady secretary he required. So a student was sent along to the hotel and the next morning her indignant mother arrived. Did we know the Chinaman? Not personally, said Beales, but he had been sent to the School under the most unexceptionable auspices. That is as may be, said the mother, but when my daughter arrived, he explained that what he wanted was less a secretary than an intimate lady friend. And I must tell you of our students. We have a governor of the School whose passion for publicity is incredible. He approached the editor of the students'

² Largely because of the fact that Smith was a Roman Catholic much of the Democrat's Southern electorate had voted for Hoover.

³ "Why I Am for Smith," 56 *New Republic* 292 (Oct. 31, 1928).

⁴ Thomas Sewall Adams (1873-1933), Professor of Political Economy at Yale, 1916-1933.

⁵ Not identified.

⁶ Hugh Lancelot Beales (1889-), lecturer and reader in Economic History at London University.

magazine and offered his photograph for insertion in the coming number. The student politely refused whereupon the governor became pressing. So the editor accepted and in the next number it appeared with the words "printed by request" underneath. We were asked to interfere but decided, I think wisely, that the students must be responsible for their own magazine.

I have read much lately. Graham Wallas's daughter has published a book on *Vauvenargues*⁷ — sound and solid but, like her, depressingly dull. But a student of mine, Belasco, has published a volume on the political theory of the early Quakers which is admirable in substance and beautifully written, and another student has written one on the Non-jurors⁸ which blows Macaulay's view of them sky-high. Then, in bed, I have re-read Mommsen with an admiration as great as my dislike. I loathe his Caesarism, and the whole thing reads, even more than when I first read it fifteen years ago, like a pamphlet on what Bismarck would have been like had he lived under the Roman Republic. And for some lectures on Stoicism, I have been reading Seneca not only with delight but with the sense that it would be difficult to find a saner working philosophy. And in this context the fourth volume of Gomperz's *Greek Thinkers* which is quite A-1. And in the way of lighter reading I thoroughly enjoyed Louis Bromfield's *Strange Case of Anne* [*sic*] *Spragge* — the story of a middle Western lady who lives in Italy and upon whose body are found, at death, the stigmata — a book with a beautiful irony running through it. And last but not least, the final volume of Nevin's reminiscences⁹ which, as in the case of the earlier volumes, are not only thrilling but superbly written, with a thread of irony running through them which is quite superb. Frida and I dined with him the other day and he spoke with great affection of you. I hope his book will come your way.

In bookbuying, there is not much to tell. I have found some nice French things but the two or three supreme things I have telegraphed for from catalogues have all been gone before I could get in. One thing was amusing. I went to a London shop for a book in a catalogue and went on the way to the university. I arrived there at 9 just before it was open and found four of my colleagues waiting, all in search of the same book. So we tossed up who should have it. Tawney won and went in only to find that it had been sold while the catalogue was printing!

Our love to you both. Here it is as mild as June and roses are still being sold on the streets. I hope Washington bears that aspect.

Ever affectionately yours, H. J. L.

⁷ May Graham Wallas, *Luc de Clapiers, Marquis de Vauvenargues* (1928).

⁸ Lucy Mary Hawkins, *Allegiance in Church and State* (1928).

⁹ *Last Changes, Last Chances* (1928).

1720 I (Eye) Street, November 23, 1928

My dear Laski: Your letter has just been read and I begin my answer at once — I have been shut up this week with a cold — merely in obedience to the doctor's caution. He said I could go to Court on Monday. Being rather seedy I haven't done much besides the cases sent home to me — as it generally is agreed that absent judges having the papers may take part in the decisions. But after finishing Warren's *Making of the Constitution* I did read Bertrand Russell's *Sceptical Essays* — amusing — but as I think I have said, never quite seeming to touch bottom philosophically. He put me on to Dr. Watson's *Behaviorism* — a very good book — though so preoccupied with resolving all our conduct into reflex reactions to stimuli, that he almost denies that consciousness means anything and that memory is more than a useless and misleading word. However much one may believe that men are automata one must recognize that what we call consciousness, memory &c. &c. are part of the phenomena — and we can't say that the phenomena would have been the same if those supposedly epiphenomena were absent. I now am in the middle of a *Life of Zola* by Matthew Josephson printed as No. 1 of Vol. 1 of the Book League Monthly. It was sent to me I suppose as an advertisement. It is very interesting — but not for the first time I find the French literary men unpleasing when seen close to — a sort of heroism in enduring squalor to be sure — but wilfulness and vanity getting into it — mean tricks of self-advertisement, and rather ill smelling. One can't but admire his force and courage in framing a great scheme and carrying it out — but at the same time one doesn't believe there was much real science or philosophy in framing it. As to the carrying out I can't recite as I've read but few of his tales. I used to say dull but improving — I now say I don't doubt improving but dull. I never realized before that Cézanne was a friend of Zola's youth. They seem to have drawn apart. Cézanne I imagine being a much more genuine idealist than Zola. Alas I have not seen enough of Cézanne's painting to have an impression of him. I shall try to see Nevinson's book. He left affectionate memories with us. Is his son still painting and successful? ¹ It would be vain for me to try to follow the great procession of your reading. Even if I were not so much slower the court would take most of my time. I am eager to see the article on political thought. I am sure of my interest. I forget now what the article was that spoke of you and Wilson. It had a series of interviews — one purporting to be with you and to the effect that I mentioned. I have not worried much about the election, but, as I told you, have the impression that Hoover is not impossibly a great man — I never saw him but once. He was not

¹ Christopher Richard Wynne Nevinson (1889–1946), *supra*, p. 744.

prepossessing — but as the talk went on for a few minutes he showed a penetrating eye for material facts and left me impressed. This was when he first appeared here on his return from Europe. When I came to your lectures on Stoicism and reading Seneca (my first impression was lectures on Stevenson and reading Samoa) I respect your poly-gluttony. Well, dear boy, I must go back to work. Your letters are an achievement.

Affectionately yours, O. W. Holmes

Devon Lodge, 20.XI.28

My dear Justice: The weeks slip quickly away; and it is now less than a month before my yearned for Christmas vacation. I am, at the moment, rather hard-worked; for my colleague, Lees-Smith, is away ill, and a good deal of his lecturing falls necessarily on my shoulders. But I am astonishingly fit, and when I look at the heap of typed mss at my side, I feel almost pious in the sense of duty performed.

Since I wrote last week, much has happened. I have been up to Glasgow and back, to give a lecture to the university; very pleasant academic talk there, and an envious sense that the Scottish professor has an easy time. The professor of philosophy, for instance, lectures from 8:30 to 10 on four days a week, and has no other duties; were I so placed, I would move intellectual mountains! Then a joyous dinner with Sankey last night, one of the best I have ever had even with him. He told me much of his new work, finding the Court of Appeal far more interesting than *nisi prius*, and feeling enormously relieved at the absence of criminal work. Then, too, good talk with a German philosopher who told me that the main characteristic of the youth there today is the breakdown of Hegelianism. It is too strait, and too complete for the new generation. To me that is pleasant news; for I think the test of creativeness, at least in social questions, is anti-Hegelimism. Indeed, I am sometimes tempted to believe that if one could work out its pedigree in detail, it would turn out to be a kind of stepchild of Calvinism in decay, and this isn't half so far-fetched as such a bald statement would seem to imply. I had also a very moving interview with a young Italian exile — a professor who had published a protest against being compelled to laud the "corporate state" of Mussolini. He was first dismissed; then nearly beaten to death in his own house by a gang of Fascist ruffians; and escaped by night over the Swiss frontier leaving everything he possessed to be confiscated. The problem is what to do with such men. I have got him a few lectures, but that merely keeps a transitory wolf from the door. I wish I could reproduce his description of that escape — the horror of sound, the dread of being caught by the beam of a passing car, the fear of the frontier guards, the sense that every passer-by must

know who you are and can hear the beating of your heart. I made the poor fellow divinely happy by getting a friend of mine to make arrangements to take his *fiancée* out of the place by engaging her as his wife's lady's maid, and we hope that this will be effected in the next ten days. Certainly his experience makes you feel that the simplicity of 19th century liberty has much to commend it. I do not like, being old-fashioned, *étatisme* on the new model. Nor must I forget the Japanese gentleman who visited me, with a list of questions he desired me to answer. No. 1 was the future of Western Civilisation? No. 2. What did I think of the population question? No. 3. What would happen to Industrial England in the next ten years? There were 22 of them altogether and I am afraid that my refusal to answer them on the ground of ignorance left him sadly disillusioned about me. He kept saying "Japanese students say you are a great teacher and yet you keep reply you know not. Have I offended?" and I would try and explain that I was a teacher and not a prophet, a distinction which seemed entirely beyond his grasp.

In the way of reading, I have had a happy time. First I do commend to you and Mrs. Holmes what I believe to be a great novel — I use the word advisedly. It is by Henry Williamson and is called *The Path*. Please set it down as worth your time and patience. Then I read Colonel House's *Papers* on which I permit myself the sole reflexion that what they seem to omit is the fact that during those years I still believe that Wilson was president of the United States. I have also, for my Glasgow lecture, had a big dose of Montesquieu. I was as convinced as ever of the greatness, but perhaps a little more struck than formerly by the large proportion of trivialities and the desire to evade clarity when it came to central issues. Still, I think, an infinitely bigger person than most of his fellows, though the thought grows on me that in 18th century France the biggest man, who saw the furthest, was Diderot and that if I could pick out one of them for a day's talk I should choose him. I also read a book on Vauvenargues by Graham Wallas's daughter — but it was dull and old-maidish and full of tiny *minutiae* which it was not worth while to put into print. Another book I heartily enjoyed was W. H. Wickwar, an old student of mine, on the *Struggle for the Freedom of the Press in England*. That I think was worthy of Hammond or Trevelyan and they would not, I believe, resent its company on the shelves with their books.

I have had, also, some pleasant purchases, though of a rather recondite kind. I mention (for my satisfaction) Élie Merlat's *Traité du pouvoir souverain* (1685) which I believe to be the first book to show signs of Hobbes's influence in France; and Linguet's *Lettres sur la théorie des loix civiles* (1767) which is the most powerful contemporary

criticism of Montesquieu I know. Oh! I must not forget to tell you that in one of the learned psychoanalytic journals a paper has appeared purporting to show that Rousseau's general will is intimately connected with his inability to contain his urine. I mentioned this casually to a young colleague of mine who is writing a book on Rousseau, and found to my horror that he took it with profound seriousness. I wonder if my horror means that I am really intelligent, or is simply proof that I am beginning to be inappreciative of novelty?

Our love, dearly, to you both. I arouse your curiosity by saying that a really pleasant surprise is in store for you.

Ever affectionately yours, H. J. L.

Devon Lodge, 30.XI.28

My dear Justice: Let me begin with the fulfilment of a duty. I went on Wednesday to a lecture given by Leslie Scott (quite admirable) at the School of Economics. We had some talk of you and he charged me (a) to give you his love and (b) to tell you that he has been overwhelmed with this Indian Commission before which he is counsel, that as soon as it is over he will write to you.¹

I have been fearfully busy — two big cases in the Industrial Court, a host of committees, some book-reviews, a visit to University College, Cardiff. But in ten days my term is over and I can sit back comfortably o'nights for six weeks. At least I've got a good bit of reading done, some of it most pleasant. The new Lytton Strachey (*Elizabeth and Essex*) I enjoyed hugely but with big reservations (I) if Essex were the third rate Alcibiades he makes out he could never have exerted great influence with the populace (II) if Bacon were the crafty little attorney he paints him someone else wrote the essays (III) William Cecil was more than a sly man weaving webs in a corner. But with all this I think his picture of Elizabeth does catch a sense both of her mystery and majesty as I have never before seen it caught in print. My only difficulty with the method is that it seems to suggest a much greater intimacy with the motives of people than I believe one gets in real life. He has a habit of making the person the instrument of a theme — rather in the logical precise way of the French. I believe it oversimplifies and my reading of life is that all over simplification leads necessarily to misjudgment. Then I read with infinite pleasure Eddington's *Nature of the Physical World* which for 24 hours almost persuaded me that I had caught a glimpse of what the new physics was really about. It wasn't, of course, true; but the sensation, while it lasted, was charming. I read also Lanson's

¹ The Report of the Indian Statutory Commission, under the chairmanship of Sir John Simon, was issued in May 1930 (*Command Papers* #3568, 3569).

Bossuet — a splendid portrait, to me over-eulogistic but making you feel that there were solid grounds for calling him the last of the fathers. And I must, too, tell you of a German short story which moved me greatly and, since I know of no translation, is worth a few lines here. It is of a huge porter in Vienna who is hungry and without a job. He is a man to whom misfortune always comes. When he visits the Labour Exchange the only place they can send him is to a circus. There he is told that they have a vacancy for a tiger. The animal has died and if he is willing to be sewn up in the skin and to be put in the lion's cage for an hour each day, he can have a job. After much debate he accepts. Then the writer describes the night of agony spent by the porter as he wonders what will happen to him in the cage. The hour arrives, he is sewn up, and is so terrified that he has to be driven into the cage with whips. The lion growls and in his terror he falls over it to be met with a whisper of "Don't be so clumsy you fool . . . that's my foot" and he realises that the lion, like himself, is another poor hungry devil. The thing, down to the climax, or anti-climax is perfectly done, especially the analysis of the fear the porter feels and the sudden effect on him of hearing the whisper from inside the skin. I read too a volume of lectures by T. R. Glover called *Democracy in the Ancient World* which I commend to you — quite the best thing of its kind, I think, since Zimmern's *Greek Commonwealth*. It is published by Cambridge.

In the way of entertainments I have not done very much. We had a pleasant dinner at Winston's but of that semi-official type where you get no intimate talk. I sat next to a Frenchman who had been in seven cabinets but had never held office for more than six months at a time. He amused me by talk of the severity of English morals. "I hear" he said, "that practically none of your statesmen has a mistress." I said I thought that was so. "Well," he said, with an inimitable shrug of the shoulders, "I have seen their wives, and I do not understand it." I went also to Grand Night at Lincoln's Inn — which I enjoyed greatly though the talk was rather too much in the realm of (to me) unknown legal incident. I was pleased to discover that to all of them F. Pollock was a kind of hero, held in real awe and reverence. The Prime Minister made a charming little speech and the Master of the Rolls a reply that would have been very effective if he had not learned the peroration off by heart. And in this context I must not forget to tell you of the letter I received from a Japanese professor asking to see me. I invited him to lunch and took him to the High Table. There I introduced him to my colleague Beveridge whom he surprised by saying "Laski great author, damned fine fellow in Japan" with a grin that obviously displayed his intense pride at his mastery of colloquial English. He paid for his lunch by presenting me with two typed sheets of questions of which the first was "what if any

is the future of Western Civilisation." I said, oracularly, "Ah, what, if any!" and he took it quite happily and passed without demur to the next question. He said he knew my "brothers" in America and when I tried to guess what he meant it turned out that he was translating "*confrères*" into English. I add to him a German who brought me a sheaf of detailed enquiries into the law of corporations on its *ultra vires* side. I did my best for him and he then asked if he could see my library here. I said of course yes; and last Sunday he arrived at 3 (having been asked at 4:30) and with difficulty we persuaded him to leave at 7:30 so that we could go out to dine. I am appalled at my good nature.

I am waiting anxiously for the results of a telegram to a French book-seller. If, oh, if, it is successful I shall be tempted to believe in Providence.

Our love, as always, to you both. *Ever affectionately yours, H. J. L.*

1720 I Street N.W., December 13, 1928

My dear Laski: Another letter today and the last one not answered! Well, I have been hard driven — and now am rewarded with a hope of leisure in our adjournment, as my work is done. I haven't looked at *Elizabeth and Essex* — but I may — and I feel as if I should find your criticisms just and delicate — also I am glad you saw Leslie Scott — a mighty good man. Why don't they make him a judge? In connection with having finished my work I forgot to mention that Brandeis looked in on me and said he came to see how the leisure class live. Frankfurter lunched and spent a good piece of the afternoon with me yesterday. He seemed in fine condition. He is another who like you and to some extent Wu (who has just printed a book of essays) amaze me by the number of their swift penetrating contacts with such a variety of subjects. I keenly enjoyed his visits. To put the *comble* just before my supper this evening Dorothy Brown and a clever young woman whose name I didn't get called here and I had a brisk jaw with them. I don't see many people outside the Court in these days. Another exception was the British Ambassador a few days ago, an old friend and a very sweet nature I should think. He surprised me by asking me for my book of *Legal Papers* — I guess on account of his son who though with Morgan has not given up his interest in the law. Frankfurter's wife and another have just edited the letters of Sacco and Vanzetti. I talked with him a little on the subject. He is convinced of their innocence — but I was not convinced that too much talk had not been made on the theme. The *New Republic* recurs to it from time to time. But the *New Republic* strikes me as having become partisan in tone of late — judging from an occasional glance. It seemed to nag at Coolidge — and I rather think

believes a number of things that I don't. I come nearer to reading it than I do reading any other newspaper — but I can't be said to read that.

I went to the Congressional Library this morning and tried unsuccessfully to get the *History of Political Thought in the XVI Century*, that you recommended — and so fell back on Legouis and Cazamian's *History of English Literature* — passages in which struck me greatly last summer. But I get little time to read. Each day brings demands that take time. I was pleased to learn the other day that Harcourt Brace &c. had sold over 2500 copies of my *Legal Papers* — which seems to be doing extraordinarily well — when the contents are considered. Apropos of the German who looked so long at your library have you no anxieties lest some such should whip a rare pamphlet into his pocket? I keep my most thief-worthy volumes out of reach — so far as may be. I wish I saw more of the illustrious to tell you about and had your power to tell of the meetings, but if you keep up relations with a recluse you must take the consequences.

Affectionately yours, O. W. H. Vandevanter lent me the privately printed letters of Dickens to (Miss Beadnell) the prototype of Dora in *David Copperfield* including later ones when their acquaintance was resumed — and according to the editor she appeared in her later phase as Flora (I think the name is) in *Little Dorrit* — Clennam's early love. I think it a fishy business to print such things.

Devon Lodge, 16.XII.28

My dear Justice: If I guess aright, this should reach you about Xmas day. It brings you both our warm affection and every sort of good wish. I hope the cold has really gone. Brandeis writes me that he has never known you in better form.

I have been fiendishly busy, but am now in haven with six weeks vacation ahead. Certainly it is a relief, for the work piled up abominably. I had three difficult cases in the Industrial Court, one of which took a whole day of conference before I could get some concessions made to my views. I have had three Ph.D. examinations in one of which we had to fail the candidate; and that always wrings my nervous withers. But when a man has 27 footnotes in the same order as the identical footnotes in Doumergue's [*sic*] *Calvin* and protests (though a clergyman) that the order is coincidental, I think one *must* take a stern view of the laws of probability. I have had also to examine candidates for a research fellowship both orally and by paper. So that with lectures *et al.* I emerge definitely bloody, but, I think, equally definitely unbowed.

Of other things let us chant. I ask you to welcome with me the advent to this house of a perfect copy of *L'Apologie de René Herpin* which is

Bodin's defence of his *République* and also the discovery of a copy of the first edition of Pascal's *Pensées* for ninepence, which I sold for eight pounds. I think I let it go too cheap, but I did not desire the reputation of avarice. I have also found a nice collection of French Utopias *circa* 1700 — and they interest me enormously not only because they are very good reading but also because they confirm a pet hobby of mine about the influence of the voyages *e.g.* the Jesuit Relations on political theory. It is clear that these things were well known to Rousseau and profoundly affected him, as well they might. I bought also, for a song, a collection of lawyers' speeches *circa* 1600-50 (French) which make queer reading. They are useful to me because of their Gallican tone, the expressions of hostility to the Jesuits, their reliance on the necessary self-sufficiency of the temporal power etc., but they certainly make one understand the fleeting character of oratorical success. One or two of them are famous; and such long-winded artificialities, with intolerable classical allusions strained to bursting point, I rarely came across. I bought, also, for a song the catalogue of a Frenchman's Library 1715-1772 with his notes upon his purchases. It is fascinating. He begins with theology and romances and little by little emphasis changes, until after 1760 he is mainly buying the Encyclopedists and the economists. Voltaire whom he notes in 1730 as "*persifleur*" is in 1755 "*le bon Voltaire*" and after Mirabeau *ainé* he writes, with obvious pride, "*je l'ai rencontré à Paris chez mon libraire.*" It was only three dollars and a pleasant plaything of which I hope to make a pretty article.

In the way of reading there is not much to record. I have had a good, stiff dose of Burke in preparation for a bicentenary piece I have to write.¹ How unanswerable he is, and how wrongheaded! I re-read, too, Morley on him, with pleasure, but with less pleasure than I have known. I thought I detected a certain primness of mind. Then, for work, I read Puffendorf who seemed to me somewhere between fifth and sixth-rate; a reputation quite beyond my understanding. Dear little Wu sent me his volume of essays and though I could not share all his enthusiasms (*e.g.*) I am unmoved by Stammler and (*pace* you) Dewey's *Nature and Experience*. I thought they showed a charming spirit and I was glad to be able to write him a sincere note of congratulation. And I must not forget to add that I was sent for review a volume of Americana by various people called *The American Caravan* — I read a good deal in the train and gathered from it that most women around the age of twenty in New York cannot keep out of strange men's bedrooms — an experience I never met in my day; proof, I suppose, that new economic conditions rapidly change the mores of a civilisation. Felix sent me the *Sacco-Vanzetti Letters* which his wife had edited. I do not think I should have printed

¹ See, *infra*, pp. 1125, 1135.

so large a bulk. But even as they are, one cannot help being deeply moved by them, and they reinforce one's fear that a grave judicial error was made by the Massachusetts Courts — I need not say to you that I do not think your Court had a right to interfere. But if I were a Massachusetts judge I should not, especially as new facts emerge, feel very happy.

Chafee wrote me at length about Harvard. He was, gratefully to my ear, lyrical about Felix, and Brandeis writes to me that F. in his judgment "the most useful lawyer in the United States". . . . I was appalled at the size of the law school catalogue he sent me, but then the thing I hate most is the illusion of bigness and I do not doubt that I am prejudiced in this regard. Which reminds me to tell you that a learned German professor came to my seminar the other day and heard me play devil's advocate for two hours. At the end he thanked me for an interesting afternoon and added with real concern "But have you no convictions? Do you not enforce a doctrine?", and was, I fear, gravely concerned to hear that I did not think that was the teacher's job.

We shall stay here over Xmas and then go abroad for a brief change, I think to Antwerp as I hear unofficially that I shall be asked to lecture in Paris — and two cities are better than one.

Love to you both.

Ever affectionately yours, H. J. L.

1720 Eye Street, December 29, 1928¹

My dear Laski: This will not be too late to wish you a happy New Year — or to express my happiness in thinking from your letters and what I hear that all is going successfully with you. I was delighted also at what you tell me in your letter (received a day or two ago) about Frankfurter — what Chafee and Brandeis say. I also am unmoved by Stammler but grieve that you are not hit by Dewey's *Nature and Experience*. Wu will be proud of your congratulations. His exaltation of me coupled with a letter that I received later, and that I considered one of the chief rewards of my life, make me feel as if I had finished, although I don't think it wrong in me to keep on at the work *non obstant* misgivings. There is no use in talking about that. One must make up one's mind as best one can. You speak of Morley's primness of mind which expresses well enough the quality that has limited my pleasure in his writing and led me to read him but rarely. It was a disappointment years and years ago after the first delight at meeting a civilized man to feel this limitation and to realize that he wasn't opening Paradise. I have had time during the recess to read the first volume of the *History of English Literature* that you put me onto — Legouis and 2nd vol. Cazamian. I read part of volume 2 last summer and was more impressed than I am by volume

¹ A brief note from Laski, dated December 26, is omitted.

I though that is admirable and instructive. I should have liked to read in the authors referred to, as I went along, but I get too little time. I shan't attempt to finish volume 2 at present as a sitting begins next week, and I have lighter stuff, such as *Elizabeth and Essex* — uncommon good reading as Strachey always is. My Secretary gave me *The South Wind*, Norman Douglas, an extravaganza of which I should think there was too much, but I have read only a little. Christmas naturally is less of an event with me than formerly but still, like every other damn thing it took time. And after this brief bulletin I must be off to a conference of the JJ.

Affectionately yours, O. W. H.

Devon Lodge, 29.XII.28

My dear Justice: I ought to have written you earlier, but I have had my annual dose of influenza, and that has meant a week in bed. However I am about again and rather rested than anything else; and tonight I go off with Frida to Antwerp for a week's real holiday.

The main experience in bed was the rediscovery of Thackeray. Granted everything that can be said against him (I) that he snuffles a little too much (II) that he has a grain of Podsnappery (III) that he lays on too thick the colours of vice and virtue, I hereby take solemn oath that he was a very great man. Item, he could by God, tell a story; item, he could make living creatures of flesh and blood; item, he was a great historian — where else in the world do Swift and Johnson and Richardson and Steele stand out so perfectly as they do in *Esmond* and *The Virginians*? No; it may not be fashionable, but I go bail for Thackeray. Second I desire to affirm that we talk much nonsense about the supreme aphoristic talent of the French. I conjure you to read Pearsall Smith's exquisite *Treasury of English Aphorisms*, and tell me if what you find there is one whit inferior to La Rochefoucauld or Pascal or Vauvenargues? That's a book, if you like! I desire further to affirm that I have discovered a great philosopher — Emile Meyerson whose *Explication dans les sciences* has revealed a new world to me. It's a world, if I make myself plain, for Sundays; but it is extraordinarily revealing, and it gives me the uncomfortable sense that the recent history of science makes Berkeleyian idealism more satisfactory as an epistemology than any other view. I mean that admit the existence of a reality "out there," scientific discovery is, at bottom, simply a system of observer's patterns which at most have statistical validity. I add that Meyerson took me to Hume and I was more impressed by the sheerly devastating brilliance of his mind than I can ever remember before. And I wish I knew why the logicians have made so small an advance in the theory of induction.

You ask why L. Scott has not been made a judge. I imagine the

answer to be that an ex-solicitor-general would not accept anything less than the headship of a court or membership of the Court of Appeal. There has been no vacancy in the first type since he was in office; and the recent tradition of the second (a good one, I think) has been the promotion of the best from within. But I have a half-suspicion that he may get one of the two new lordships of appeal which are to be created in the new year. I hope so; for though I don't think him very able, he has great integrity of character and a fine sincerity. The lecture I listened to was ordinary in substance but it had an air of real distinction about it.

My influenza has kept me from seeing people until the other day. But I was vastly amused by two incidents of this week-end. Yesterday a gentleman asked to see me with a name that I did not know. I sent out word that I was busy but he said it was highly important. When he came in, he coughed, put a fine, silk hat carefully on a chair, and spoke substantially on these lines. I was on the brink of fame. My work and personality were beginning to be noticed. I might easily become a figure of mark. What I needed now was judicious advertising, a skilful presentation of my merits to the public. I must be present at the right dinners. I must be talked about in the right circles. A judicious expenditure of fifty pounds with him would see me, by say May or June, well on the road to the distinction I deserved. I tried to get in a word in vain. When he had exhausted himself I explained that I could not take advantage of the offer. He opined I might be deterred by the price; he might quote a special rate of forty pounds. I said I would not, I feared, do it for nothing. He regretted that, in an age when advertising was the road to fame, I did not perceive its merits. Could I give him the name of any colleagues less inclined than I to hide their lights under a bushel? Isn't that superb?

The second visitor was an old gentleman from Hastings who had discovered that the Pyramids contain a revelation of the future. He could not get a publisher for his book. A grandson of his was a pupil of mine and had spoken in high terms of my kindness. Being assured that his facts were sound, he thought it possible that his literary style was defective. Would I revise his book for him for a suitable fee, say twenty pounds. I explained that I could not as I was sceptical of the thesis. He told me I could read the book which contained approximately one million words. I said that if I were he I would try the Theosophical Society which was, I believed, deeply interested in the pyramids. I therefore gave him a letter to Lady de la Warr¹ asking her to treat the old gentleman kindly. There, you would say, the story should end with an angry letter from Lady de la Warr to me. On the contrary, my dear Justice, I received today a warm letter of thanks from her, saying that

¹ Lady De La Warr, wife of the ninth Earl, was an eager believer in the theosophical movement.

the book is highly remarkable. Among other things, the gentleman's calculations show conclusively that the Pyramid (I do not gather which) predicts the King's illness, the election of Hoover, for this year, and other equally remarkable things. The proof seems to be that Al Smith multiplied by the number of his votes and divided by the height of the Pyramid equals the number of the feast in Revelations. That, assuredly, you did not know before. To ease your sense of humiliation I will add that I did not either; but life, after all, is merely a continuous gain of new experience.

You do not mention your cold: I hope that means it has quite gone. Whatever you and Mrs. Holmes do, please avoid the ghastly influenza epidemic which seems to have visited you. I count on coming to W'ton in April, and I hope to find you both fit and well in that time.

Our love to you both, and all good wishes for '29.

Ever affectionately yours, H. J. L.

1720 I Street N.W., January 11, 1929

My dear Laski: You have adventures even when in bed with the influenza — or just out of it. Apropos of your advertising friend I seem to remember that the sedate Croly in the *New Republic* years ago spoke of advertising as a necessary and proper means to success. (It may have been some understrapper but it rests in my mind as from him.) You and I prefer the other way. I believe that advertising has become a science, on which Brandeis could expound, having been counsel in former days, with psychologic insight which it would be interesting to know. But I settle more and more into ignorance — and in my brethren's talk at luncheon am almost painfully impressed by my outsideness from current affairs. We shall be powdering along for another week and then have an adjournment. We have had nothing that excited me very much, although one or two cases stirred up the newspapers.

As to your Berkeleian idealism I suppose you know my short formulas — I have repeated them often enough in talk and print. I begin by an act of faith. I assume that I am dreaming, although I can't prove it — that you exist in the same sense that I do — and that gives me an outside world of some sort (and I think the *ding an sich*) — so I assume that I am in the world not it in me. Next when I say that a thing is true I only mean that I can't help believing it — but I have no grounds for assuming that my can't helps are cosmic can't helps — and some reasons for thinking otherwise. I therefore define the truth as the system of my intellectual limitations — there being a tacit reference to what I bet is or will be the prevailing can't help of the majority of that part of the world that I count. The ultimate — even humanly speaking, is a mystery. I don't see that it matters whether you call it motion or thought or X —

all we know of it is that it is capable when tied in a certain knot of producing you and me and all the rest of the show. Absolute truth is a mirage. Thus I am indifferent to the Berkeley business. Also as I see no reasons for attributing cosmic importance to man, other than that attaching to whatever is, I regard him as I do the other species (except that my private interests are with his) having for his main business to live and propagate, and for his main interest food and sex. A few get a little further along and get pleasure in it, but are fools if they are proud.

Have I mentioned *South Wind* — by Norman Douglas? It is hard to conceive writing or reading it — but when you do and don't ask improvement but are content with a few hours pleasure I'm blown if you don't get it. I must turn back to the law.

Affectionately yours, O. W. Holmes

Devon Lodge, 15.1.29

My dear Justice: Your letter was doubly welcome, for it showed that you were not troubled by the prevalent influenza. I have had a dose of it (in Antwerp) and though I am back at work, it has left a certain deadness which is irritating. However, I am well enough content.

Things move in their accustomed routine. I have read a little, written a little, and lectured on Burke over the wireless to celebrate the 200th anniversary of his birth — a queer experience for some 200 people wrote me letters asking questions about him, most of which they could have answered for themselves from an elementary manual, so that I spent a pound odd in postage and another pound for a typist to defer to the illegitimate claims of good manners. Of reading I have had some pleasant adventures. I emphasise first for your solitaire *The Prisoner in the Opal* by A. E. W. Mason — one of the best shockers I have read in many a day. Then a queer two-volume *History of British Civilization* by one Wingfield-Stratford which had points, though full of absurdities like the endeavour to interpret each age of British history in terms of its architecture. Literally to me it conveys nothing to say that it was necessary for the Victorian age to build pseudo-Gothic, but that may be my ignorance. Then I read and greatly enjoyed the whole of Darwin's correspondence. I lay my hand on my heart and say that there never was a more loveable great man — always modest, never aggressive, simple and kindly, and permanently open to new ideas. When you compare him as a person to Descartes or Newton or Leibnitz or Goethe he simply outtops them altogether. Really it is impossible to rate him too highly. I read, also, Vinet's *Études sur Pascal* which I conjure you to note for Beverly in the summer, an exquisite book. Probably he makes Pascal a little too

Protestant but he is really inside that tortured being and if you do not know it I am sure it would please you greatly. I'm glad you like the Cazamian-Legouis — that is, I'm sure, the way literary history ought to be written; I certainly know nothing in English that even compares with it. I read, too, in ms Haldane's autobiography. It's a queer book. His vanity is, in a delicate and refined way, colossal; and his power of intrigue evidently very great. He illustrates, too, the variety of truth; for he tells his side of certain episodes in a way that is utterly without relation to the published accounts of others. But his breadth of view and his essential kindness of temper come out strongly. To me the whole thing gave the sense of a really first-rate family solicitor trying infinite permutations and combinations to get the ultimate result somehow. His weakness was that he mistook himself for a philosopher which *au fond* he never was; his strength an amazing power of unhurried concentration on detail which usually enabled him to arise from the study of any subject twice as well equipped to tackle it as any opponent.

My influenza has meant that we have been out but little, but of one dinner party I must tell you. It was to meet a young playwright and a middle-aged novelist and after dinner about five other writers came in. Each of them talked like his works. The playwright exploited his emotions; the novelist expounded his theory of the novel; the others each explained their exact position in the literary firmament with an incisive vigour that left me gasping. The novelist said that he was going to lead a back to Rousseau movement but questions revealed the fact that he read only an English translation of the *Confessions*. The playwright commended to us the "simple realism" of Shakespeare — as displayed, I asked, in the *Midsummer Night's Dream*. One of the others told me that his essays had been compared by a critic to Hazlitt's, whereupon another whispered in my ear that the critic was the essayist's cousin. I enjoyed myself hugely. The total effect was exactly what you see in a monkey-house as you watch the beasts eagerly picking off the fleas from one another. One man found out that I was an elector to an annual lectureship in English literature and explained his claims to give the lecture at length. Another attacked Dickens, and when I ventured to remark that Dickens could perhaps tell a story he curtly told me that the novelist did not exist to satisfy infantile desires. He wanted the novelist to legislate for mankind by drawing pictures of the age of which the lesson was unmistakable. I hinted mildly that Dickens had legislated when he wrote *Bleak House* but the answer was a snort and the host buried my remains quietly in the garden. I do wish you could have seen the show. Each of them had a press-agent and each wanted you to be quite clear that he was a master of his craft; each too was a real artist in attitudes. Simplicity was the real crime and we played at elaborateness in,

irony for three hours. I would go weekly if I could. It restores my faith in the simple, bourgeois virtues. It makes me love Laburnum Villa and the commuter and P. G. Wodehouse and the solidly substantial dullness which comes from routineering at a thousand a year. I whisper in your secretary's ear that I suspect Mr. Norman Douglas would have been very much at home among them. He likes arranging his complexes in public.

With the beginning of term, I am hard at it on the usual lines. But I have a pleasant interlude on Thursday when I go off to Paris for a week-end to deliver a lecture at the Sorbonne. That, I hope, means a couple of days pleasant hunting in the bookshops. Did I tell you that I found a collection of *voyages imaginaires* of the 17th century in a French catalogue some of which are quite obviously the pith of Rousseau's *Second Discourse*?

Our love to you both. Take care, don't get influenza, don't overwork and above all, don't let the notion of resignation cross your mind.

Ever affectionately yours, H. J. L.

1720 I (Eye) Street N.W., January 27, 1929

My dear Laski: A moment of leisure has come, not yet turned to much account, as it is beginning rather than ending. I have however read a detective story sent to me by Knopf — *Red Harvest* — by Dashiell Hammett — somebody shot on every page — and the narrative hero coming out unharmed and unhung when by probabilities he ought to have been finished one way or another — quite absorbing though suggesting doubts. Brandeis put me onto *King John* — Aeschylan lines as Swinburne says — curious that Shakespeare can't resist the word-quibbling which I suppose comes from *Euphues*. There are some lines of it in the beautiful tragic talk of Arthur to Hubert, when he is pleading for his eyes. That led to *Richard III* — rather amusing, his announcing himself as a villain at the start and giving you such doses of villainy straight along. (The editor of the reprint of the First Folio says "Villain" in the opening soliloquy means churl — I don't see why, quite — as he goes on to tell his acts and schemes.) The Bard seems lonely in his greatness. I don't make very much of his contemporaries — except Marlowe — who was the devil of a fellow. Also today I began Redlich's biography of the Emperor Francis Joseph — and am much interested. It occasionally is a little obscure because his familiarity with the whole business leads him at times to take a good deal for granted. It isn't the kind of thing I like to read — it isn't in the line of my business and as well *Elizabeth and Essex*. I rather grudge time to personal histories — even when important. But what does it matter how I pass my time! I should be

more sensible if I could loaf unscrupulously. You speak of answering many letters asking imbecile questions—I hand such letters to my secretary and tell him to regret that my duties don't leave me time &c. Autograph letters that don't enclose a stamp I tear up—arguing that if they don't care to pay two cents for my signature I don't care two cents to send it. I notice that many, I should think most of the stampless requests, come from intelligent young Hebrews—if I can judge by the names. I told my secretary to make a note of Vinet on Pascal—but the title does not draw me greatly. Apropos of what you say of Darwin (which I readily believe) it may interest you that a connection of mine, Clark,—has given comfort to the fundamentalists by publishing an article repudiating evolution as popularly conceived—and disbelieving in the missing link.¹ He is a distinguished man of science—and from past talks with my wife's nephew Gerrit Miller—another distinguished man of science—I gather that he shares the disbelief. He wrote an article some time ago discrediting the Piltdown man²—I believe generally accepted outside of England. Of course the chaps don't take theological views. Clark has published a schematism of development³ which I don't understand and can't talk about but some competent people think he will stand beside Darwin some day. I think I mentioned a book on behaviorism once.⁴ He seems to think that consciousness is shown to be a futile conception by the fact that no one tells or, he would say, can tell what it is. That seems to me silly. When I was a small boy my father taught me a philosophical lesson by asking me to tell him how salt tasted. You can't—and you can't tell a blind person how colors look. There are many questions to which you must know the answer at first hand or you can't know it. You don't disprove an ultimate by showing that I can't go beyond it. This detached reflection I interject for no particular reason—except my desire to mark my disrespect for what the writer thought a sockdolager. *Affectionately yours, O. W. H.*

Devon Lodge, 5.II.29

My dear Justice: You must forgive my long silence. But the excuse is the good one that I have had a slight, but painful, attack of pneumonia which has badly embarrassed my time-table. I am much better, and back again at college; but I am going slow until I am really on my

¹ Austin H. Clark, "Animal Evolution," 3 *Quarterly Review of Biology* 523 (December 1928).

² Gerrit S. Miller, Jr., "The Jaw of the Piltdown Man," 65 *Smithsonian Miscellaneous Collection*, no. 12, 1-31 (November 1915).

³ "A New Classification of Animals," *Bulletin de L'Institut Océanographique*, No. 400 (1921).

⁴ *Supra*, p. 1113.

feet again. The nuisance of it is that I shall have to give up my cherished American plan for Easter — partly money, and partly the need to make up lost time. I hate doing it, for I had built enormously on the pleasure of seeing you and Felix. But if the decks are to be clear for action and I am ever to have leisure for my book I simply must have that Easter vacation as a locked-up recluse. Damn, and damn! Why are the days so short?

I haven't, I think, told you of my visit to Paris which, if brief, was very amusing. I lectured to about 100 people, of varied nationalities; and the period of questions was the funniest thing imaginable. A Frenchman doesn't simply ask a question: he buries it amid an avalanche of oratory. He asks you about liberty, and makes a speech on the principles of 1789, the glory of 1848, the sufferings of France in the war. An Italian exile begins a question with Dante, refers passionately to Mazzini and Garibaldi and devotes five minutes to the sins of Mussolini. A Bulgarian exile tells you of what he has suffered and pours execration on ten unknown names which sound like a cross between a hiss and a spit. I enjoyed it thoroughly. I had a jolly lunch with some old students of mine who are working at the Sorbonne, and a pleasing dinner with Meyerson the philosopher of whom I have a great opinion. He agreed with my dislike of Leibnitz which gave me joy, and he came nearer to making me understand what Einstein really is doing than anyone else I have ever met. Also he spoke with great admiration of Morris Cohen, which went to my heart. I was amused, too, by tea with about a dozen American exiles, of whom at least eight had been divorced, one, a lady of about 35, three times. They were all violently anti-American and horrified by my refusal to share their views. One gentleman explained that he could not return to New York as he had two orders for alimony against him and to meet them would alter too drastically his style of living. They were all suffering from a real hunger for America and all much too self-conscious to dare to admit it. I had, too, a brief but fruitful book hunt and acquired some things like C. Wolff¹ and Thomasius² which I needed to round off my continental XVIIIth century collection. I wish I could have had a little longer, for the shops were fascinating, and I could do no more than whet my appetite.

I came back to bed; and it was cheered for me by Thackeray. I started with *Vanity Fair* and read the lot and heartily enjoyed them. Sir, I wish to affirm in the presence of a judge that Ethel Newcombe [*sic*] is the most adorable heroine in 19th century fiction. And that fellow can tell a story

¹ Christian Wolff (1679–1754), German philosopher of small originality who did much to bring the rationalism of the Enlightenment to Germany.

² Christian Thomasius (1655–1728), German jurist who was associated with Wolff at the University of Halle in spreading the gospel of the Enlightenment.

and draw a character. Is there a modern living who could do old Major Pendennis as exactly and as happily as Thackeray? Has any historian caught the outline of George Washington better than *The Virginians*? Sentimental? Well, I prefer sentiment to the lavatory school of fiction which seems to predominate nowadays. But here I must stop. I am still trying to get abreast of my correspondence. Please take this as an interim letter to be improved upon later; and assume that it brings a full cargo of devotion to you both.

Ever affectionately yours, H. J. L.

Devon Lodge, 12.II.29

My dear Justice: A delightful letter from you synchronises with my sense of complete fitness. I feel that I could leap over at any rate moderate sized hills. I was intensely interested by what you said of your scientists' attitude to Darwinism. I speak of course with ignorance and humility; but I have the sense first that the reaction against it is a little exaggerated and secondly that it remains profoundly unsatisfactory that it should not be able to explain (I) the origin of variation or (II) how a variation presented can, often enough, be of any utility for survival in its original stages. But granted all that, the fact that natural selection takes place seems to me solidly proved enough, and also that evolution is real, even though the details of the actual pedigree are much thinner and more uncertain than the original enthusiasts thought. And at any rate the supreme result of the seventy years since 1859 has been a body-blow to the Eternal from which he will find it difficult to recover. That is what really matters most. I remain permanently and impenitently anti-clerical. And the settlement of the papal question only makes me feel this the more strongly.¹ I do not know if you have noticed that among the terms of the treaty Mussolini agrees to hand over all marriage questions outside judicial separation to ecclesiastical courts and that there shall be religious education in all schools. To me these things are a violation of all that is essential to the tolerant character of modern civilisation, and it reads to me like a victory for the forces of darkness. I only hope that the result of restoring the pope to political sovereignty will be the old result that he will meddle again in secular affairs and ride for a fall. I am told that this is a Jesuit victory; and it bears on its face their tenets and tentacles. I agree with Voltaire that there will be really no peace in the world until the last King has been strangled in the bowels of the last priest. I hope you warmly agree.

¹ On February 11 the Lateran Treaty between the Pope and Mussolini had been signed. The Vatican received recognition of its claim of political sovereignty and the Italian state accepted the Roman Catholic religion as the sole religion of the state.

I must, next, let off my *cri de cour* [sic] for the temper boils within. I have had two literary adventures which make one foam at the mouth. In 1721 Lord Macclesfield was impeached for corruption. He was a great friend of Mandeville, the author of the *Fable of the Bees*, and all the latter's unpublished correspondence is in the Macclesfield archives. He wrote much to the continental philosophers and their replies are said to be there by the score. I wrote to Lord M. asking for permission either to see the papers or to have copies made, or even, if he wishes, to have them deposited at the British Museum for scrutiny. He wrote back two lines of refusal to say that a desire to see family papers on the part of an entire stranger seemed to him simply unnecessary intrusion. Next I discovered that a gentleman in Sussex possessed mountains of unpublished letters of Burke as also all the replies to Burke's pamphlets with his annotations thereon. I wrote and made a similar request and got a refusal on the ground that he did not desire publication. Can you imagine a more disgusting dog in the manger policy? The second irritates me more than the first for one of the things he has is Burke's copy of Tom Paine's *Rights of Man* which a friend of mine has seen literally covered with annotations from top to bottom. We ought certainly to have an Act of Parliament giving a right of entry to the Record Office to make copies of all historic papers after the lapse of seventy-five years. As it is, these two fellows could burn every page they possessed and no one could do anything. Let me add that I did not write out of a blue sky but obtained introductions in each case from personal friends of the two curmudgeons and then got those curt refusals. It really does make one angry.

Majora canamus. I have bought a nice Diderot in 17 volumes and have been literally revelling in his adorable correspondence with Mlle. Volland.² Then I have read a remarkable work by L. B. Namier on English politics at the accession of George III which will make the whole period from 1760-1783 seem totally different when there has been time to digest the result in the light of his brilliant analysis of who members were, upon whom they depended, and how they voted. And I have had a very good time with an interesting French book by Brunschvicg the philosopher, narrating the history of the idea of conscience since the Greeks, a very good book. And in a lesser field I enjoyed a reprinted Trollope — *Orley Farm* — immensely. It has a criminal trial in it which for sheer brilliance I have never seen surpassed in literature except by his own murder trial in *Phineas Redux*. At any rate, those old fellows

² Louise Henriette Volland (1716-1784); the fullest record of Diderot's devotion to "Sophie" is in the 1930 edition of his *Lettres à Sophie Volland* (Babelon, ed., 3 vols.).

did know how to tell a story and with respect I submit that not one in fifty of the moderns who are praised can touch them in that regard.

We have been out a little and had two pleasant dinner parties here. One was for Hoernlé, whom you may remember at Rockport, a philosopher once at Harvard but now in South Africa. He drew a grim picture of university education there. But his wife is an anthropologist and of course supremely happy in the best possible field for her work. On Sunday Walter Lippmann and his wife came to dinner. I always like him, even though he lacks the charm of Felix and a certain moral fineness that Felix excels in. But he has great perceptiveness and sound judgment, though I think he needs to know a little more history and not to think that the next five weeks is what really matters. He told me the tragic news of poor Croly's illness, which he seemed to think would permanently incapacitate Croly. I never made much of his writing, but I always greatly respected his devotion and rectitude. They will find it difficult to replace him on the *New Republic*.

I am busy working at lectures I have to give on the nature of the League of Nations next month at Geneva. I look forward to it, above all, because it is two years since I had a look at the Geneva bookshops. But before that, alas, I have to read 40 essays by aspiring young men on the future of parliamentary government. Sir, the way of the teacher is hard.

Our love to you both. We are living amid arctic cold.

Ever affectionately yours, H. J. L.

1720 Eye Street N.W., February 15, 1929

My dear Laski: Your news is saddening and disquieting — you say you are better but are you taking all the proper precautions? I believe your wife can be trusted if you are obedient — but not all husbands are. I don't think you had mentioned to me your plan of a visit at this time but I had heard of it and was looking forward to it.

Your letter comes just at the end of an adjournment, when of course I am in a scrabble and so must cut this short. I haven't read a great deal. I think I mentioned looking through the *Malleus Maleficarum*¹ and the amazing introduction dated 1927 of the English translator. I am now just finished a little book of excerpts from Spinoza with some slight illustrations and an arrangement intended to elucidate.² It doesn't

¹ *Malleus Maleficarum* (Rev. Montague Summers, tr., 1928) was a fifteenth-century treatise on witchcraft written by James Sprenger and Henry Kramer. The devout translator's belief in witches was no less intense than that of the original authors.

² *The Philosophy of Spinoza* (Ratner, ed., 1927).

do me much good for Spinoza anyhow is rather tedious and I don't believe his postulates or accept his reasoning from them. It is his view of the universe that is the thing. He sees as I see it more nearly than any of the old that I can think of.

Redlich was here the other night and talked a steady stream for 5 hours which was rather long for me but full of brilliancy, fire, and amusement. He put me on to *À l'ombre de la croix* which I have read but a chapter of — but which won't take long — and I have another novel lent me by Gerrit Miller — *Dieu protège le Tsar* — L. Dumur — which he recommended to me to read I forget exactly *quo intuitu* — and this p.m. comes a volume from Felix — *The Bases of Modern Science* by J. W. N. Sullivan which I long to get at but which must take its turn — for tomorrow is a conference which so far as I can see must be followed by either an opinion or a dissent *per me* as my lord McReynolds may vote tomorrow. On Monday we begin a four weeks sitting — and there will be little reading I fear.

Did I ever mention *John Brown's Body* — a poem by Benét? A view of the Civil War — the last kind of thing that I want to read — but I was a good deal impressed by it. I am amused by your American exiles whom you saw in Paris — a strong presumption against them I should think — and interested by your recurrence to Thackeray. It may be age, or accident — or the small print but I find the old boys and pretty much all the new ones too long-winded for my impatience — yet I can read what sounds to me pretty drooly in Spinoza without discomfort — age I rather think draws some new lines.

Please remember that you have charge of an unusual and valuable instrument and take care of it. Tell your wife that I believe in and rely on her. Your little daughter must be quite grown up by this time — is she becoming a companion?

Affectionately yours, O. W. Holmes

Washington, D. C., February 22, 1929

My dear Laski: Your most interesting letter, received last night, raises a doubt in my mind. You boil with wrath that Lord Macclesfield would not let you see the Mandeville correspondence. Is it not a case of literary curiosity against the feeling of family privacy? I don't suppose that there is likely to be much philosophical importance in the letters. There may be matters bearing on the character of an ancestor. While I incline to sympathize with you, I should not dare to say that I thought Lord M. wrong. The other case seems stronger for you — but even there I doubt if it warrants more than vexation. I should hesitate to condemn a man who refused to allow a picture to be photographed, even though personally I might deem it more public spirited to allow the photograph to be taken.

Next as to the views of my connection, Clark, on evolution. He is a very considerable, very able, and very learned scientific man, and knows what he is talking about. Of course his discourse was laid hold of by the Bible men and I am afraid that he may have thought of the publicity that that would give him — but I don't suppose that he is any more a Bible man than you are — and speaking ignorantly I take his view to be an out-crop of a different scheme of development, which I don't pretend to understand. I suppose that his belief is an extension of what De Vries showed happens in some plants¹ — a sudden inexplicable jump. In an interesting book that Frankfurter sent to me lately, *The Bases of Modern Science*, (J. W. N. Sullivan, pub. by Ernest Benn, London) I read that even among the mathematicians one theory now offered is a theory of "emergence" by which "the properties of a whole cannot always be deduced from the properties of its constituents" and some of the evidences as to man that have been relied on have been attacked. Some years ago my wife's nephew Gerrit Miller, a really eminent scientific man published an elaborate examination of the Piltdown man relics and concluded that they came from an ape (or some of them — I don't remember the details). Of course the English stood up for their discovery but my impression is that the weight of scientific opinion is with him. Clark, (the man in question) I believe regards other supposed exhibits of the missing link in the same way. I shouldn't think that anyone except a man in the business could form an opinion of any weight. We naturally incline toward anything that contributes to ease of thought. The postulate of science is that everything can be explained — but with the view of man that I take, this perfectly well may not be so. I think it unlikely that we know anything ultimate about the universe or have faculties that fit us to do more than to adjust ourselves to it and to live. You, I suspect, have more of a creed and impassioned enthusiasm than I have — though your creed is not the orthodox one. All the foregoing has nothing to do with clericalism — I don't believe in it any more than you — I think it childish — and yesterday just before I received your letter I was hearing of a lady, speaking of Mussolini and the pope, asking who cares about the Pope? At times I am a little disturbed at exhibitions of ecclesiastical power, but I have such a conviction that it is doomed that I don't care to hurry its fate. It helps to keep order *ad interim*. I ought to add that my conviction is only faith in the prevalence of reason in the long run (coupled with indications on the specific points that have struck me) but I am well aware how long reason may be kept under by what man wants to believe. I do despise the Will to Believe.

¹ Hugo de Vries (1848–1935), Dutch botanist whose experimental study of evolution led to his formulation of the theory of mutation in *The Mutation Theory* (Farmer and Darbishire, tr., 1909–10).

Your faithfulness to the earlier generation — Thackeray — Trollope especially — always pleases me, while I share it but imperfectly. Since *Phineas Phinn*, 50 years ago, I haven't had the courage to tackle Trollope. In my old age I am more bored by novels than I used to be, while I am not bored at all by *The Bases of Modern Science* or even by Spinoza — who, as I have said before, although tedious and using premises and reasoning that I disbelieve, sees the world as I do more nearly than any of the old. I have just read a little book of selected translations, because it was sent to me and had a recommendation by John Dewey — another man who sees the world somewhat as I do. I haven't heard of Croly's illness — I must inquire. We seem to agree about him. I have a great respect for his intelligence but don't willingly read his writing. I am availing myself of Washington's birthday. We are sitting and having cases that I dislike about rates and the Interstate Commerce Commission. I listen with respect but without envy to questions by Brandeis and Butler using the words of railroading and rate-making that I imperfectly understand. To be familiar with business is a great (secondary) advantage. Someone said of Brandeis, He is not afraid of a Balance Sheet. His experience at the bar is an infinite advantage in many cases. Butler has had something of the same, and Vandevanter has land law and Indians at his fingers' end. McReynolds is the boss in Admiralty because he has carried through a series of decisions that I don't believe in at all — although I don't [believe] he had any special knowledge before his victories in that field.

I don't remember whether I have mentioned Redlich's being here the other evening and discoursing as copiously and amusingly as always. I read his *Francis Joseph* with profit to my prejudices. We soon shall have the inauguration in which I shall endeavour to avoid the death that it is apt to inflict on the old who sit out of doors for the swearing in and address of the President. Four days later I shall be 88 if I live till then. The straws gradually accumulate on the camel's back, but only slowly I am glad to say. You don't say, but I infer that all traces of the pneumonia have disappeared.

Affectionately yours, O. W. Holmes

Devon Lodge, 26.II.29

My dear Justice: Life flows on in the normal way, and I cannot complain of inertia. I have given a public lecture on Hobbes; I have written a long article on the danger of uniformity;¹ I broadcasted a long talk on Haldane's *Autobiography* and I am just finishing the notes on the six lectures I have to give next week at Geneva. And as I feel extraordinarily fit, I conclude that work is very good for me.

¹ Presumably "The Dangers of Obedience," 159 *Harper's Magazine* 1 (June 1929); reprinted in *The Dangers of Obedience and Other Essays* (1930).

The most interesting thing I have done since I wrote last was a dinner at Winston Churchill's. It was good fun in two ways. First, I had a great scrap with him and an Admiral on the meaning of maritime rights. I maintaining the simple thesis that the British conception and the American merely derived from their different situations; they, poor souls, arguing with true English *ῥῆσις* that the British view was essential to the safety of the world. May I whisper that Admirals may be great technicians but as students of logic they have a certain lack of profundity? Winston told us one glorious story. He reads all the letters sending conscience money to the exchequer. One enclosed a cheque for 22/6 and ran as follows. "Dear Sir, I enclose a cheque for the payment of a dog license for three years. You may say I have no dog; that is true. You may insist that I have never had a dog; that is also true. But I have a wife who is such a bitch that I feel morally obliged to accept the responsibilities of my position. Yours faithfully." And one brilliant remark was made there. We were discussing the suppressed novel *The Well of Loneliness* which deals with sexual relations between women and defends them. Winston asked if anyone knew the author and a young civil servant said he did. "What kind of a person is she?" "I should say," answered the civil servant, "that she is a self-made man." One thing, by the way, impressed me and that is the religiosity of naval men. There were three of them there, and they were all Bibleolaters if there was such a word. One told me quite seriously that during the war he always tried the bible for a text before issuing orders for the coming action. I could not think of any comment worthy of the occasion.

Reading, too, has been very pleasant. Haldane's *Autobiography* in which you, Felix and I have honourable mention, is very interesting reading. It brings out his great powers of work and organisation, his essential kindness, and a certain sweet vanity he had. It isn't, I think, the book of a first class mind but certainly of one who knew how to make the utmost of the ability he had. I hope you will have time to glance at it. Then I have read Zimmern's new book² which has much in it of extraordinary profundity. The essay on "The Prospects of Democracy" is really a masterpiece and deserves, I think, a quite special place in contemporary political literature. And a Frenchman Fay sent me a book called *The American Experiment* which while not always by any means first-class has again and again some really interesting *aperçus*. And a charming book on the French novelists from 1500-1800,³ quite short but crowded with ideas and doing well what I have long wanted to see done — explaining the changes in the form of the novel in terms of changes in the social

² *America and Europe, and Other Essays* (1929).

³ Probably Frederick Charles Green, *French Novelists, Manners and Ideas from the Renaissance to the Revolution* (1929).

milieu of each period. And I add that Compton MacKenzie's *The Three Wayfarers* [sic]⁴ is a tip-top spy story which I earnestly recommend as an accompaniment to solitaire.

Of other things I can only sing of minors. But one queer thing is worth recording. We have an American student at the School who is in some sort under my care. On Saturday I was called up and informed that he was dangerously ill with pneumonia at the Italian hospital. I went down there and was told by the doctors that he was not expected to live. After much tribulation I sent a warning telegram to his people in New York, and made arrangements for (I) a specialist (II) a funeral. The specialist promised to go next morning. On the Sunday morning I called at the hospital and was mysteriously told that the patient had gone; other information I could not get anyhow. I dashed round to the lad's rooms in a taxi and found him with three other intimates calmly playing bridge. My specialist had gone round on the Saturday night and found that the diagnosed pneumonia was in fact a violent attack of constipation induced by overeating. He met the problem by a terrific purgative; and at 10:30 on the Saturday night the patient was dancing on the bed. I wired the parents that he was all right and got a wire back "Expect constipation, he always overeats, not alarmed." Isn't that a superb climax? And I must tell you the tale of the Japanese professor who came here to tea on Sunday. There were perhaps a dozen students and young instructors and we were gossiping gaily over the fire. Suddenly the Jap. said "Halt!" We all stopped. "Let us," he said, "in the presence of the master" — pointing, alas, to me — "speak only of the higher things." We had, as you can observe, no alternative; and so for an hour he discoursed on the higher things and we sat silent about him like acolytes at a religious festival. Twice I tried to interrupt but on each occasion he said "I cannot think if I am subjected to nervous strain" and I had to subside and do my best not to choke with laughter. One of my lads, who is a wit, told him at the end that he thought he had not taken sufficient account of recent German doctrines. Had he read the works of Chemnitz, Dusseldorf and Dreisberg. The Jap. said he had not, whereupon the lad proceeded to give him a list of mock-serious titles all of which the Jap took down in a vast notebook and my hints that he was being teased did not produce a single ripple on the surface of his complacency. When he left we all literally rolled on the floor with suppressed emotion.

I have bought little lately, reserving myself for Geneva where I go on Saturday for a week or so. The bookshops there, especially one in the old town, do one's heart good; and I have arranged to read Rousseau mss in the afternoon in the public library.

⁴*The Three Couriers* (1929).

I hope all goes well at 1727 [*sic*]. I am looking forward to Hoover's cabinet. Felix, I imagine, will be pleased at Stimson's nomination.⁵

Our love to you both.

Ever affectionately yours, H. J. L.

Devon Lodge, 16.III.29

My dear Justice: I got back from Geneva nearly a week ago to find myself in the midst of tragedy. My colleague Allyn Young died from pneumonia after only two days illness, and the world has lost a great economist and teacher and I a friend and colleague such as one rarely finds. I can't easily put on paper what a remarkable man he was. But his great quality was humanism — the ability to take difficult technical themes and deal with them not as a paper problem, but as they emerged into life with all its problems. His death makes me feel as though I had lost a limb, for ever since he came over from Harvard eighteen months ago he and I had fought every issue together on the same side. The tragedy is greater because his wife is blind and Frida and I have had the very difficult task of helping her, poor thing, to make arrangements for her return to America. You know how these things cut deep.

Geneva was extraordinarily interesting. The lectures went well, and I met every sort and kind of person. One or two you may know by name. The outstanding one was Eugène Borel,¹ the Swiss international lawyer, brilliant, witty, and altogether devoid of the "professional" attitude one so often finds in the continentals. I met, too, Struppe² [*sic*] the German lawyer, full of learning and ideas but a much more formal type who never moved outside the confines of his subject but talked extremely well within them. And I enjoyed Anzilotti,³ the Italian member of the International Court, who, though much older, reminded me in his verve and brilliancy, of Felix. I had breakfast with Stresemann,⁴ the German statesman, who struck me as subtle and shrewd, and honourable. I add that I thought him without exception the ugliest man I have ever seen. I had a brief talk

⁵ From March 1929, to 1933, Henry L. Stimson was Hoover's Secretary of State.

¹ Eugène Borel (1862–), Professor of International Law at the Académie du Droit International and Swiss member of the Permanent Court of Arbitration, 1928–1946.

² Probably Karl Strupp (1886–1940), Professor of International Law at Frankfurt, 1926–1933.

³ Dionisio Anzilotti (1869–) was a member of the Permanent Court of International Justice from 1922 to 1930 and President of the Tribunal from 1928 to 1930.

⁴ Gustav Stresemann (1878–1929), as Foreign Minister of Germany from 1923 until his death in October 1929, rendered monumental services to Germany in restoring her to the family of nations.

with Austen Chamberlain⁵ who said he remembered you at their London house forty years ago and that his sister never ceased to talk of you and her pleasure, which I well understood, in your letters. Austen is very queer. He so obviously means to do right and be kind but he has some defect of personality which always, even when he is saying the kindest thing, gives the impression of conscious superiority, so that, as Titulescu, the Rumanian prime minister [*sic*]⁶ remarked to me, you feel offended even when he is doing you a favour. Most of the others I saw would not be names to you. But I must put on record my sense of the high purpose by which all the officials of the League are informed. It really is impressive to meet a real and coherent zeal for a world-interest above the separate interest of the different states there. The Polish delegate to the League put it to me very well: he said he came there a fervent nationalist and after three years of routine work he found himself writing home to his government that certain policies he was asked to recommend were simply unfair in the light of European needs. One delightful Geneva story I must not omit. There is only one public lavatory in all Geneva, tended as these places are, by an old lady. The Rumanian delegate had to stop there and on giving her the usual tip expressed the hope that business was good. "No," said the old lady, "what this city needs is a Mussolini." You observe that political speculation may derive from the most diverse materials.

I found some nice books there, of which the best was a superb first edition of Spinoza's *Tractatus*; but some Rousseau volumes pleased me too and a very nice set of Saint-Simon who remains for me the prince of diarists. I also found a copy of Leonhard's translation of your *Common Law* which I presented *con amore* to the University Library. Altogether, on this head, it was a most successful visit.

The first engagement when I got back may amuse you. There was a lunch at the School to the Institute of Intellectual Co-operation, and I was placed between a German lady and a Rumanian. She asked me if I were related to the author of the *Grammar of Politics* and I said yes. "Your father," I suppose said she. "Yes" said I unblushingly. This she told the Rumanian gent who was very anxious that I should tell my father of the great influence the book had in Rumanian universities. Very impressively he urged me to put my father's work before me as an example to emulate. This, you will be glad to know, I as impressively promised to do. The whole lunch was very amusing. I had to interpret one or two of the speeches and the task of softening down certain Gallicisms for general

⁵ Sir Austen Chamberlain was Foreign Minister in the Baldwin government.

⁶ Nicolas Titulescu (1883-1941) at this time was Minister to England and Rumanian delegate at the League; the Prime Minister of Rumania was Julius Manin.

consumption was, I can assure you, a task of no small artistic effort. How e.g. stand next to the Archbishop of York and put into English M. Luchair's⁷ "*nous aimons les chansons Hongrois du tout coeur, surtout les chanteurs qui les chantent.*" I said "Hungarian folk-songs are as exquisite as the race which produced them is attractive" which is, I think, as far as one should go in the archiepiscopal presence.

I was enormously interested in your accounts of the critical attitude to Darwinism. I met young Haldane⁸ the other day and put the substance of it to him and he said that most of the younger biologists here would endorse it. He made the interesting point that most Victorian science suffered from excessive simplicity and that now the balance is being painfully redressed. I imagine there is truth in that; and I incline to think that the process of redress will in the end be even more fatal to the religious outlook than was the case with the old frontal attack of sixty-years ago. Though, obviously, there are dangers of religious revival in terms of political tactics, as in Italy and in Spain; and it would be very interesting to measure the strength of religion in England by seeing what happened to a political party which came out definitely for disestablishment of the Church. I do not know. Indifference grows by leaps and bounds; but the modern electorate is very sentimental and I should not like to bet that the indifference would reflect itself in the polls.

One piece of news will, I hope, please you. Yale University has asked me to go there next March for three months. In principle I have accepted, and if the finance turns out satisfactorily I shall certainly go. You can imagine that the prospect of some week-ends in Washington really attracts me. I long for some talk.

Our united love to you both. I am writing at a table covered with snow-drops and daffodils.

Ever affectionately yours, H. J. L.

1720 I Street N.W., March 17, 1929

My dear Laski: Pollock finds just fault with this paper — but I haven't as yet succeeded in getting blocks that suited me as well as the Capitol where we are furnished. So I allow my comfort to prevail over other considerations. I have been under a pressure that ceased only yesterday since my birthday — we were sitting for arguments. I had two opinions to write and *certioraris* to examine — and I have answered near 70 letters and telegrams. But we are adjourned and my work is done. Only small items outside. The only thing that I have read is an odious tale *Dieu protège le*

⁷ Julien Luchaire (1876–), man of letters and historian, for many years was a principal figure in the Institute of Intellectual Cooperation of the League.

⁸ J. B. S. Haldane, distinguished biologist; nephew of Lord Haldane.

Tsar — L. Dumur — the first part battles that needed a map and explanations to be more than a whirl of names, with too much blood and guts — the last the doings of Rasputin with the highest ladies in Russia — if true not well to tell — if, as I guess, the dream of a writer seeking sensation, a dirty business — but it makes me want to know something authentic about that seemingly unspeakable person. Like the life of Francis Joseph it makes one feel that almost anything is better than to have the fate of an empire and the best it holds depend upon the whim of a single incompetent person.

Now I have for two or three hours a little book that Redlich recommended — *L'ombre de la croix* — (J. & J. Tharaud) a strikingly impressive account of the life of squalidly poor Jews in Hungary — a life in which their religion plays an incredibly great part. I think if the promised leisure keep on I shall read the second edition of Dewey's *Experience and Nature* — partly rewritten. The publisher wrote to me that Dewey (whom I never have seen) was much pleased at something that I wrote about it to Wu — and that he rather indiscreetly published. You, I think, got nothing from it — but it impressed me greatly. I must try to get a look at Haldane's *Autobiography* — and I note what you say of Zimmern's last book — and readily believe it. You don't mention the name of the book on the French novelists — 1600 [*sic*]—1800.¹ I wish I had it just now — for it sounds about what I want. There are moments when aimless repose or equally aimless wandering — seem better than to have some damned end in view — even so vague a one as improvement — but it is a frame of mind very hard to get into when one is generally kept somewhat tense. Wouldn't it be great if destiny should let me reach, if not 90 at least the 90th year, still working — not that it matters — but age makes egotists of us all.

Ever affectionately yours, O. W. Holmes

Devon Lodge, 25.III.29

My dear Justice: Term being over, I am free again, and I feel like a young ram upon the mountains. For next term is an easy one, and I can really look forward to almost six months of safe work. The last ten days have been very pleasant. A charming lunch with the Swedish Minister,¹ at which Ramsay MacDonald and Snowden were guests. It was a good political gossip which I enjoyed less for the gossip than for the queer angle it threw on the political mind. I should say that no politician lives more than six or seven months ahead and that at least half his time he is talking to convince himself. He is curiously grateful when you can give his

¹ *Supra*, p. 1136, note 3.

¹ Baron Palmstierna, *supra*, p. 919.

argument philosophic form, and equally curiously eager to give any argument special weight if it comes from a source he approves. One or two tit-bits from the talk may amuse you. Both men said that Eustace Percy² was much the most unpopular member of the Cabinet; too rapid promotion had gone to his head and he made the grave mistake of lecturing the house from an eminence. They both had an immense regard for Austen Chamberlain's character but thought his mind was too unelastic ever to be capable of success in his present sphere. The Swedish Minister amused me by saying that there had been no Anglo-Swedish diplomatic trouble since 1830 and that his post here was simply a combination of social function and leisure for reading. Then I had a dinner party here for Sankey L.J. to which Scrutton L.J. among others came. The latter was in superb form. He had been reading some article of Pound's which irritated him. "He is the kind of man," said Scrutton, "who thinks that four references make a four-square truth." You will be interested by the fact that of the old Law School men he rated J. C. Gray easily the highest. He talked much of Maitland of whom he used a good phrase: "Most historians throw a light on dark places, he threw a searchlight into the unknown." He said that of the judges he had known he rated Bowen first, Watson second and Blackburn third; Sankey said that he would put Davey and MacNaghten in that class. Scrutton told us that as a junior he had appeared before Jessel with a hopeless proposition to maintain and that the great man made him feel exactly like a naughty school-boy who has been detected in an elementary error in Latin prose. He told us, too, a delightful story of Dicey who said to him once when he, Scrutton, praised the clarity of Dicey's mind "No, I have a clean mind; F. Pollock has a clarifying mind." Sankey told us of a man who asked for help in obtaining silk: "it is true that I have never made a living at the bar, but my wife has an income adequate to the status, and I have been a devout churchman all my life." Altogether, as you can see, a good evening. Then I was entertained to lunch by the five senior officers of the Army Class at the School — a delightful set of fellows. One had the V. C. with a bar and we made him tell the story of their attainment. I wish I could describe the calm way in which he described crossing no man's land under heavy fire to put a machine gun which disturbed his wounded out of action. I said "My God! I couldn't have done that," to which he replied, "You couldn't have helped it; you'd have felt just like a nurse who stops a noise that disturbs the children in the night-nursery." They were adorable fellows, and their deference to me, men who had seen service all over the world, made me feel strangely humble. And I must not omit the queer gentleman from Arkansas, a Y.M.C.A.er who, on the last day of term, visited me for light upon the religious feelings of London students. I ex-

² Lord Eustace Percy was President of the Board of Education.

plained (I) that I had never had the curiosity to enquire (II) that I hoped sincerely they had none. "Sir," he said, "have not you yourself experienced Christ"? I explained that, to my knowledge at least, I had not. He then invited me to pray — an invitation I politely but firmly declined. He then asked if I objected to him praying. I said "not at all, but not in my room." He then asked me if I thought it right as a "shameless infidel" to seek to guide the mind of youth to the light. I explained that I sought to do no such thing. My humble mission was to teach them the criteria by which in political science light might be distinguished from darkness. He then asked me if I had ever thought of the after-life. I said I had but it had ceased to interest me. He looked at me with what he intended to be singular majesty and said, "I do not condemn you, I pity you." I thanked him and urged him to consult the Professor of Theology at King's College and felt grateful for a superb experience.

In the way of reading I have not much to record. I read Winston's final volume with immense interest.³ But he has a viciously rhetorical mind and you feel that he convinces himself by the sheer eloquence of his own voice. Still he has a great tale to tell and with all his defects it is quite impossible not to like him. Then I read a clever French book by Julien Benda — *Mon premier testament* — a theory of politics as the expression of temperaments; beautifully written, very clever, and, like most French speculation in this realm, pushed much too far. A charming novel I must not omit, *The Six Mrs. Greenes*, by L. Rea — an analysis of the ladies of a family done with most admirable malicious grace. If it comes your way, pray do not pass it by. Parts of it are of the very stuff of which England is made. And I thoroughly enjoyed Sinclair Lewis's new novel⁴ — not a great artist, but superb vitality and a most accurate photographer.

And at that point term ended. The last lecture given, the last student seen, I hope to recover my humanity. But I do not need to do that to send you both my love and greetings.

Ever affectionately yours, H. J. L.

1720 I (Eye) Street N.W., April 2, 1929

My dear Laski: You deserve a better letter than you will get — for though we have been adjourned for weeks I am tired and haven't had much leisure. I find that I have examined 450 applications for *certiorari* this term — which means 30 days work. Apropos of what you say Haldane remarked about Victorian science, I thought that its oversimplification was generally acknowledged. I have seen it brought out so definitely in An-

³ *The Aftermath* (1929) was the final volume of *The World Crisis*.

⁴ *Dodsworth* (1929).

thropology and other matters of which I am least ignorant that I thought it had been a postulate.

The chief event here latterly has been the flowering of the cherry trees around the Potomac basin and the magnolias everywhere — I should say second only to the four greatest things I have seen on earth. Next to that I will put having read John Dewey's *Experience and Nature* for the third time. Just one idea running through the whole and I think that now I could sum it up. If reduced to not more than two pages it would be the profoundest *aperçu* of the universe that I ever have read, which of course means a strong tendency to agree with his insight. I was sent the *Yale Review* with your article¹ which seemed to me very able — but as you know some of your yearnings I don't sympathize with and almost believe noxious — but the crowd is with you rather than with me and I dare say you will smash a good deal that I should like to keep. But I don't feel so seriously about the human race as I once did. I am in pretty good shape — but my wife less so — however I think she is slowly improving from grippe and a succession of misfortunes. I got hold of a book yesterday on Rasputin which I shall look through, translated from German, by René Fülöp-Miller. It seems to be impartial and I want to know something about him. Your *Yale Review* led me to think I should read *Le crime et le chatiment*² — and I have on hand a life of Herman Melville³ and whether I shall do my duty or not I don't know. I mean now to take a nap.

Affly yours, O. W. H.

Devon Lodge, 2.IV.29

My dear Justice: My days have been spent in the grim business of packing up poor Mrs. Young to return to America; and in sending off Frida and Diana for a month's holiday to Weimar, where Diana, who has a gift for languages, is to learn or begin to learn, German. So I sit here rather solitarily and read and write until ten when I go off to bed with a novel unless some kindred solitary drops in for coffee. Though the house is dismal enough the reading and writing are interesting and as I want Frida refreshed by a change and feel in myself extraordinarily well I do not complain.

You will be amused when I say that the most interesting thing I have done since I wrote to you last week is to go to a funeral. The mother of

¹ "England in 1929," 18 *Yale Review* (N.S.) 417 (March 1929). Laski's article vigorously attacked the record of the Baldwin government and of the liberal opposition and urged that the first necessity was for the transformation of England into a social democracy.

² The suggestion perhaps came from Edith Wharton's "Visibility in Fiction," 18 *Yale Review* (N.S.) 480 (March 1929).

³ Lewis Mumford, *Herman Melville* (1929).

my colleague Beveridge died and I went out of compliment. I was immensely struck by the fervour with which my neighbours (A. an eminent F.R.S. and B. a distinguished historian) participated in the service. They prayed, kneeled, sang hymns, etc. in a way that would have done credit to a revivalist. On the way back I asked them if they were Orthodox Christians. Each said no with emphasis. I then asked why the service had been so impressive to them. Each said the same thing that outside a church the whole thing is obnoxious but that inside some kind of childish memory takes possession of him, and he cannot resist the impulses it arouses. Our neighbour happened to hear the conversation and told us he was president of some secular society and yet found that on the great festivals of the Church he was uncomfortable if he was not there. To me it was nauseating to hear men and women thanking God for something that had hurt them like hell and taking comfort in the prospect of a future meeting in which 90 per cent of those present did not believe. Whether it is the aesthetic beauty of the tradition (to which, of course, I am a stranger) I don't know; but it is curious that I should be roused to intellectual indignation by something from which people who share my general intellectual outlook should derive emotional comfort. I should like to know what happens inside you in this realm.

Of other things, I have not much to tell. I have been reading happily in and round Spinoza (Roth's *Spinoza*, Little, Brown is very good if you haven't come across it) and in and around Hegel for next term's lectures. I am overwhelmed by S. and all my prejudices against Hegel are merely intensified. I cannot see anything in the world of the things he sees in it — neither unity, nor God, nor an unfolding purpose. But from Spinoza I do derive a sense of meeting a noble soul in a way that elevates the mind and heart. I read, too, a number of (you will laugh) Maria Edgeworth's novels and had a glimpse into a stately minuet in which I too, loving the manner, seemed to pirouette gracefully with the authoress. Also I have been reading some international law — mainly cases, but with one or two treatises like Westlake's. I am greatly impressed by Stowell and inclined to put Lord Parker very high indeed. But I am amazed at the intense nationalism of all these people. Natural law for Stowell meant so sweetly and naturally what an 18th century English gentleman who admired Mr. Pitt would approve. And, lastly, I have read Beard's big blast on American Civilisation (written with his wife) which I thought showed insight but was nowhere near so good as Sam Morison's two volumes and more-over written in an irritating journalese.

From this, you will gather that I have little at the moment to say. But I go North on Thursday and I hope to gossip amiably when I return. My love to you both.

Ever affectionately yours, H. J. L.

Washington, D. C., April 13, 1929

My dear Laski: Your page written from solitude comes on top of an unanswered longer letter and I begin my reply when about to go to a conference. Your companions at the funeral who took part in prayer they didn't believe in, merely illustrate what I am eternally repeating: that man is like all other growing things and when he has grown in a certain crevice for say twenty years you can't straighten him out without attacking his life. That is what gives the power to churches that no rational man would deem worthy of thought if he were growing free and had no past. You know my oft repeated formula that property, friendship and truth have a common root in time. I am not entirely insensible to the effect of church ceremonies even now — though neither they nor the patent fallacies in what they read from St. Paul interest me very much — but I let time run over me till the show is over. But if, as is unusual, the service is well done, and you are in a crowd moved by emotion there is a contagion about it.

Now I have returned from the conference pretty well tired with it, though afterwards Brandeis and I drove over to Georgetown and home by a *circumbendibus* around the Cathedral, to see the white and pink dogwood and wisteria that lined a part of our road. The sights here are fleeting but they are superlative while they last. What damned fools people are who believe things. A case has gone over for further consideration, of a woman wanting to become a citizen, but who, being as she says, more of a pacifist than Jane Addams,¹ has to explain that she would not fight for the Constitution (or, as her counsel said, wouldn't do what the law wouldn't let her do) and so opens to the Government a discourse on the foundation of the Constitution being in readiness to defend itself by force &c. &c.² All 'isms seem to me silly — but this hyperaethereal respect for human life seems perhaps the silliest of all.

But I almost fear that I am impolite — for you are not without your creed — to my regret. I haven't read much since my dash of philosophy but I am engaged in Lewis Mumford's *Life of Herman Melville* — which interests me much as a careful study of a man whom the writer believes great — but hardly less from the tone and attitude of the author. He despises the conventions of my earlier days but seems to me tied up in

¹ Jane Addams (1860–1935); social reformer, founder of Chicago's famous Hull House, who was a militant leader of the pacifist movement from 1915 until the time of her death; chairman of the Woman's Peace Party.

² *United States v. Schwimmer*, 279 U.S. 644 (May 27, 1929). A majority of the Court held that Rosika Schwimmer's pacifism made her ineligible for citizenship. Holmes delivered a dissenting opinion in which Brandeis, J., concurred.

those of a later crowd. He looks down from a height on the America of the past and on the civil war — his *hauteur* toward the achievement of comfort imports a Tolstoy coupled with a Michael Angelo. He walks on lightning smitten peaks, but all samey — when I see a cove talking about the *malice* of the universe I feel pretty sure that I am with an anthropocentric who really thinks the world was made for man and has the old theological turn at bottom — and know that though he may puzzle he can not interest me. He does, however, with the rather pitiful story of Melville's life. I must leave Melville unticketed for the moment. I think he is great — but I think he also is anthropocentric — and therefore more busy with being gigantic than wise. I hope someone will tell me something about this chap Mumford. I think he must be one of a class — but as yet I don't get him exactly sized up. I merely doubt whether he is such a hell of a feller as he ought to be to carry so much side. The unconscious arrogance of your Arkansas student who did not condemn but pitied you is innocence compared with a full-fledged *New Republic* aesthete. Your man reminds me of a phrase — that a good fellow dead long ago used at times — "I pity and despise but do not hate you." But I must stop — to send this off.

Affectionately yours, O. W. H.

Devon Lodge, 13.IV.29

My dear Justice: A brief but delightful letter from you amazed me with its record of *certioraris*; I don't know how you manage it. But I was distressed at the news that Mrs. Holmes has had grippe. I hope you can send me better tidings of her, especially now that spring has come. I envy you a little the sight of the Potomac in full bloom.

I have had a very quiet time. A brief visit to Liverpool to put Allyn Young's widow on her boat (she is blind, poor thing) a couple of days with my people in Manchester and then back here to work. I have sat twice in the Industrial Court and had a jolly dinner with my chief Beveridge. But outside of that I have done little except read and even there it has been almost entirely international law for lecture purposes. And may I whisper to you that Westlake apart I was not overwhelmed by the quality of the treatises on international law. They are enormously long-winded and platitudinous, especially the French and the German. Westlake I thought full of commonsense, but, equally emphatically, by no means a distinguished mind. The most impressive single book I read was a monograph by a young colleague of mine (Lauterpacht) called *Private Law Analogies in International Law* which I hope you may turn over if it ever comes your way. And in another field I read a quite interesting new book on Rousseau by one Wright of Columbia University which,

without being distinguished was very sensible. And a volume of short stories by Hugh Walpole,¹ one of which pleased me much. It is called "Old Elizabeth" and tells of an old woman who becomes a servant in a Scottish family. Its members are all hard and grim and her deafness and clumsiness worries them. But she assumes that they are the essence of kindness and speaks of each with great warmth. At last she is dismissed in a fit of temper by the father and each is terrified that the old thing will starve. The daughter takes a room for her, the son furnishes it, and the father gives her a little income. Each is out one night a week and at last mutual discovery is made and they bring back the old woman to live with them in triumph. There's not much in it, of course, and yet it leaves a most charming taste in the mouth. And someone sent me a new edition of Arthur Young's *Travels* which I have read with far greater admiration than ever before. That fellow had incomparable eyes and a commonsense that was damned near to genius. Altogether, though I find being by myself intolerably lonely, I have got much work done; I feel my mind has not yet stopped growing, which is pleasant.

I have also bought one or two nice things. First and foremost the *Plaidoyers* of Linguet — rare, but cheap. Then a bundle of Mazarinades one or two of which fill in special gaps in my theory of the Fronde, and a beautiful copy of Bodin's *Apologie pour René Herpin*, the defence of his *Republic*. There is still my frantic wire about a Cambridge catalogue (oh so admirable) to be answered but of that I cannot hope to hear until next Tuesday I fear. Frida writes to me from Germany that she has found me a treasure, but provokingly, does not say what it is and I have to possess my soul in patience until the first of May. I must, by the way, tell you that I had a catalogue the other day in which your Lyndwood's *Provinciale* (1505 isn't it) was catalogued at £40 and the Fitzherbert of 1517 at £60. These things advance by leaps and bounds.

And I must tell you (to my own discomfort) how beautifully I was "done" the other day. A man of forty arrives and asks for help. I can't bear just to turn people down in case they turn out genuine and so I asked for details about him. He said he was McGill ("just after your time, Professor Laski") and Yale, talked with fluency about Borchard,² wished he had known Felix, spoke warmly of Mack, J. and altogether gave the impression of a good fellow down on his luck who deserved helping back to America. So I lent him five pounds. He insisted on an I.O.U. and solemnly gave me an address in Hartford, Connecticut. I meditated on the luck I had in life on the principle of Richard Baxter.³ About an hour

¹ *Silver Thorn; A Book of Short Stories* (1928).

² Edwin Borchard (1884–1951), Professor of Law at Yale, 1917–1951.

³ Richard Baxter (1615–1691), Presbyterian divine, chiefly known as prolific author.

after he'd gone my colleague Hobhouse rang me up to ask if I would care to help an old Corpus man down on his luck etc. after discussion it turns out to be my man. Hobhouse had given him three pounds. Yesterday Graham Wallas rang me up to say he was sending X along as I might care to help him. He had attended Wallas's lectures at Harvard (class of Walter Lippmann) and Wallas was moved by his story and had lent him five pounds. Would I etc.? Five minutes talk, and it was clearly my man. This morning Sankey L.J. called up to ask if I could recommend X, an old Harvard student who had called with a request for help; seemed to know me very well etc. I warned him, but the gent skipped out while Sankey was telephoning. I called up Scotland Yard and they told me he is an old Oxford man who has worked the system for years and makes an average of forty or fifty pounds a week. He is widely read, got a first in greats, and just has this kink. I can only say that he is a very great artist, that I was wholly convinced by him and that I really feel that he deserves my five pounds.

I have the best of news from Frida and Diana. They have fallen in love with Weimar and Jena, and everyone is most kind to them. Frida writes of a performance of *Lear* more overpowering than any she has ever seen in England and one of Ibsen's *Master Builder* that left her moved to her depths. I went to see the Negro play *Porgy* last night and was stirred less by the play itself than by the acting (negroes) who were like a perfectly rhythmic orchestra.

My love to you both, as always. *Ever affectionately yours, H. J. L.*

Devon Lodge, 3.V.29

My dear Justice: Consolation I cannot send, for there is no consolation in these moments of pain and loss.¹ But all the love that deep friendship can bring you I am anxious you should feel is yours. You know how big a space you both have filled in our hearts. It has altered the world for me to have known you; and I cannot easily bear the pain of thinking you are separated. She was always so good to me, and I learned almost the first time I saw her that she had, with all her reserve and reticence, a genius for affection. And to see you together was a lesson in the beauty of love. I know that things can never be the same for you again. But I want you to remember that your house was made by her for me as for others a place of loving pilgrimage and that while we live she will be remembered with deep affection. I can't say more, for I cannot write more. But think that I am with you in spirit and that my love for you will not grow dim.

Ever yours affectionately, H. J. L.

¹ Mrs. Holmes had died on April 30.

Devon Lodge, 21.V.29

My dear Justice: I am very anxious to have a word from you. But I do not want you to bother about writing just now. Would you therefore mind asking your young man to send me a couple of lines? I shall be on tenter-hooks until I hear. I do wish more than ever I can remember that I could be with you these days.

I am, as you can imagine, wrapped up in the general election; and it is quite fascinating.¹ I have amused myself this time by speaking only for those candidates for whom I should be glad personally to vote, and certainly one cannot complain of lack of adventure. At Oundle, for instance, the whole school turned out in the market place to shout us down; but because I simply beamed with pleasure at the heckling they behaved like lambs to me, and for forty minutes I spoke in perfect peace to a thousand people who had come in the hope of a row. One great problem is to know what on earth one's questioners really want to know. For instance at Coventry a man asked me whether I did not think there was a grave decline of liberty. I said a decline but not grave. What did I propose to do about it? I said, with such composure as I could muster, that I proposed to do what I could to arrest it. He then thanked me, being obviously much relieved. Another man asked me if I did not think American prosperity a menace to the world. I said that on the contrary it was one of the hopes of the world and rebuked him for an attitude dead in 1789. The audience cheered wildly and he got up to apologise. Another fellow asked me if I could give him a guarantee that statesmen in the future would be of better principles than in the past. Another man wanted to know why there was a statue of the rebel George Washington in London while there was none of that great statesman, Lord Roberts!² But in general the eagerness of one's audience to have facts and explanations, especially the women, is really very impressive. I believe that Baldwin will get a straight majority, though small; and all things considered I believe that this is the best thing that could happen. The great feature of the election is the fact that everyone has really ceased to be moved by Lloyd-

¹ On May 10 the fifth session of the Parliament elected in 1924 came to an end and it was formally dissolved as from May 24. In the general election on May 30, Labour secured 287 seats, the Conservatives 261, and the Liberals 59. On June 4 Baldwin resigned as Prime Minister, recommending Ramsay MacDonald as his successor. MacDonald, despite earlier indication that he would not accept the office without a clear majority, did accept the Premiership.

² Frederick Sleight Roberts (1832-1914), first Earl Roberts; field marshal, whose principal military services to the Empire were rendered in India in support of the "forward" policy, and in South Africa in bringing the Boer War to a successful conclusion.

George. That is really a triumph for English commonsense. He plays the part of charlatan in a way that is quite unforgettable.

And from the angle of a peaceful scholar the election has its merits. Searching the market-square at Peterborough I found the 16 volumes of Métra's *Correspondance littéraire* for 7/6; and rare as they are I should certainly have had to pay ten pounds or so for them in France. And in Coventry I found a first edition of Rousseau's *Confessions* for a shilling. So does service meet its reward.

Walter Lippmann sent me his *Preface to Morals* last week. I have been singularly moved by it. Though it hasn't originality, and doesn't deal with the big question of how disinterestedness is to grow, I thought it a superb definition of an attitude wholly sympathetic to me and written with a severe beauty quite beyond praise. I read too a very interesting book by the *abbé* Brémond in the great trial of Fénelon v. Bossuet³ pleading for the former with much passion and as I cannot bring myself to like Bossuet whose oratory seems to me to conceal a very ordinary mind I was very delighted with it. And as I bought a two volume edition of Mme. de Staël I have been reading her, mostly in trains, with very great pleasure.

One incident I must not forget. I had to give a public lecture the other day in a series on "Philosophies of History" and Karl Marx was allotted to me. I spoke the usual commonplaces for an hour and at the end a dear old lady who might have stepped out of *Cranford* came to me and said "That was, I suppose, *Karl Marx* of whom you were speaking?" And at Helston [*sic*] in the Peterboro' division when I was speaking about the land problem I reminded them of how John Clare the poet⁴ had protested there against the enclosure of commons. An old labourer applauded very hard and at the end came up to tell me that his grandfather had been imprisoned by the magistrates for taking round announcements of Clare's meetings. It is amazing to find how the events of a hundred years ago are still vivid traditions in rural England. They talk of the Tolpuddle Martyrs in Dorchester as though they were transported two or three years ago.⁵ And if you mention them the chances are that a man will come up to you and say that he married the granddaughter of one "and the missus will be grateful for your kind words." It's a very moving thing.

³ Probably Henri Bremond, *Apologie pour Fénelon* (1910).

⁴ John Clare (1793-1834), rustic poet from Helpstone whose poverty was the result in large measure of enclosure and who wrote frequently of its consequences, nowhere more effectively than in his satirical poem, "The Parish."

⁵ In 1834 six laborers of Tolpuddle, Dorsetshire, were sentenced to seven years' transportation for having taken the oaths of membership of the Grand National Consolidated Trades Union. See Webb, *History of Trade Unionism* (1926) 144 *et seq.*

But just now I shan't bother you with a long letter. Please take the greatest care of yourself. Your dissent in the valuation-reproduction case⁶ alone shows how essential you are to the Court. But I do not need to ask you to have courage. That has been the principle round which you have built your life; and it is one of the roots of our pride in you.

Our deep love,

Ever affectionately yours, H. J. L.

May 23, 1929

Dear Laski: Please keep on writing to me and I shall get on to my pen before long. I am reconciled to my wife's death as the alternative seemed inevitably a life of nothing but pain. A companionship of sixty years is more than one can bargain for — a companionship that has made life poetry. If I can work on for a year or two more, it is well enough — and if not, I have lived my life.

Affectionately yours, O. W. H.

Washington, D. C., May 30, 1929

My dear Laski: A dear letter from you has just come — you will have heard from me before this, but I reiterate: please keep on writing and I shall do the best I can. I don't lose my interest in my friends or affairs of the mind or in my job — although it may be, as I wrote to someone yesterday, like a man's beard growing after he is dead. My wife's death seems like the beginning of my own — but I am confused and hardly know what I think about anything. It hasn't prevented my writing. Frankfurter wrote to me highly praising something that I wrote in the midst of anxieties — and I have just turned off a dissent about the refusal to admit a pacifist to citizenship that Brandeis liked and joined in.¹ There seems to be a distinct compartment in one's mind that works away no matter what is going on with the rest of the machinery. I have been delayed in reading W. Lippmann's book but have it at my elbow, probably to be finished between here and Beverly — to which I go via the Touraine on the night of June 5 — arriving Boston 6:50 AM and I hope Beverly Farms by Saturday. The women behaved like bricks and gave up their usual holiday at this time — go with me and straight on to B.F. where things will have been prepared for them and they will put on the finishing touches, and notify me. I have been reading a curious book called *The Confusion of Tongues* — by Charles W. Ferguson — an account of the best known come-out sects, Spiritualism —

⁶ Brandeis and Stone, JJ., had delivered dissenting opinions on May 20 in *St. Louis and O'Fallon Railway Co. v. United States*, 279 U.S. 461, 488, 548, in both of which Holmes had concurred.

¹ *United States v. Schwimmer*, *supra*, p. 1146.

Theosophy — New Thought, Christian Science — Ku Klux — Mormonism, Mennonites — and other less known by name to me but he says maintaining great establishments — ending with the Atheists — (not the quiet scientific unbelievers but people on fire with the same enthusiasm as the others only with inverted values — or colors).

I don't remember whether I mentioned F. Hackett's *Henry VIII* which I agree with Frankfurter in thinking a masterpiece — but I am on the verge of shutting up and going north and am not available for consecutive thought.

Affectionately yours, O. W. Holmes

Devon Lodge, 4.VI.29

My dear Justice: Your brave card gave me joy beyond words. *Macte antiquae virtutis.* You in any case could not want for courage. But you with memories of her are doubly armed.

I have, as you can imagine, been swept off my feet in these last three weeks. Thirty speeches, articles innumerable, my school work, and now the amusement of watching *de près* a cabinet in the making — it has been hard but interesting work. So far as I can see, it looks as though Sankey will be Lord Chancellor¹ and that gives me, as you can imagine, very special pleasure. It will amuse you to know (this absolutely, please, between ourselves) that MacDonald wanted me to go to the House of Lords as a debater for them. But I said (a) I haven't the money (b) I want my independence and (c) I am a scholar by vocation and not a politician. It is amazing to sit with MacDonald and watch what happens. People who hate him like poison send gifts and congratulations. They write pages to insist on their claims. When the leaders meet each has a list of his particular pets who think that they ought not to be overlooked. People who have never been Labour write to offer their help. It is all the most incredible picture of the lust for power that I have ever seen. One story I must tell you. I went North to speak for MacDonald. On the way I bought a paper in which Lord Daryngton,² speaking for Capt. Macmillan³ said he regarded him as the most brilliant young man in England. In the afternoon I bought another journal in which Daryngton spoke for Major Ropner⁴ and said he regarded *him* as the

¹ Sir John Sankey became Lord Chancellor on June 8.

² Herbert Pike Pease (1867–1949), first Baron Daryngton; Liberal-Unionist M.P. for Darlington, 1898–1923.

³ Captain Harold McMillan, M.P. from Stockton-on-Tees from 1924 to 1929, was defeated in the June election.

⁴ Major, later Colonel, Leonard Ropner had been Parliamentary Secretary to the Secretary of State for War, 1924–1928; in the June elections he was defeated as candidate for Sedgfield; in 1931 he was a successful Unionist candidate for Parliament.

most brilliant young man in England. Being amused, I cut these out. Two days later I was at Darlington with 2 hours to wait for my train. So I went into a Tory meeting and found Lord Daryngton speaking for Viscount Castlereagh.⁵ He urged the voters to support him because he was the most brilliant young man in England. When questions were invited I got up and asked how Lord Daryngton reconciled his description of Castlereagh with that given by him of Macmillan. No answer. I then asked how he reconciled it with his description of Ropner. No answer. I then enquired whether some divine concatenation of circumstances had persuaded the Tory party to put the three most brilliant young men in England in adjoining constituencies. By this time the audience was rocking with laughter and the chairman hurriedly brought the meeting to a close. Nor must I forget to tell you of the lady who asked me in Dulwich whether a Labour government would base its legislation on the principles of Jesus Christ. I said that I thought this unlikely in the first five years, but that afterwards anything might happen. I add that the one thing that pleases me most in the defeat of Baldwin is the tolerable certainty of an improvement in Anglo-American relations. MacDonald is set on a term to this insane naval competition and a new agreed definition of freedom of the seas.⁶ I am hopeful that all this may do immense good to the peace of the world. With England and America in harmony big things can be done. And I see no reason at all for the bickering of the last few years. At the same time I do regret the loss of Baldwin himself, for with many faults, he is a great gentleman and one of the cleanest fighters I have ever met in politics.

In the way of reading I have had, as you can guess, to depend mostly on trains. But I read one excellent book on Rousseau by an American named Wright (*The Meaning of Rousseau* — Oxford) and one incredible book by a Frenchman named Schinz who takes five hundred pages to say that Rousseau desired the happiness of the human race. Then the translation of Proust which I enjoyed far more than I expected though I add that I found something irritating in the minute exploration of the insignificant habits of insignificant snobs. I see now what an immense influence his method has had on contemporary fiction. He has persuaded the second-rate that the mere accumulation of detail is itself significant and they have not the art to see that accumulation as such is the enemy of art, that it is selective accumulation plus a story which, as in the *Old Wives' Tale*, really makes the great novel. I also read, thanks

⁵ Viscount Castlereagh (1902—) was defeated as candidate for Darlington; in 1931 he became Unionist M.P. representing County Devon.

⁶ In September, MacDonald announced that Great Britain would join the Five Power Conference on Naval Disarmament to be held in London in January 1930.

to you, Dewey's *Experience and Nature* and thought it really important, perhaps because I so largely agree with it. And I must not omit an admirable collection of essays by A. N. Whitehead called *The Meaning [sic] of Education* which seemed to me full of the scholar's ripe wisdom. Also a charming volume by Mrs. Graham Wallas — *Before the Blue-stockings* — essays on people like Mary Astell⁷ which I thoroughly enjoyed.

Now I have turned back to work at my Yale lectures and I hope this political interlude will be an interesting nightmare not to recur for five years. But it gives me valuable material for teaching and I cannot complain. At least when I come to write on the technique of cabinet making I shall know a little of how it is done.

I was made very happy by your dissent in the railway valuation case and the Rosika Schwimmer case. The former I know only by the decisions; the latter I thought an iniquitous injustice and I was proud of your dissent. I do hope the modern state is not going to become a medieval church.

Our love to you. Take great care *please*.

Ever affectionately yours, H. J. L.

Devon Lodge, 11.VI.29

My dear Justice: I expect you have now settled down to the peace of a Beverly summer; and I hope you are going to have Felix near at hand for talk. We have taken a house for August on the very top of the Surrey Hills — a part you may know as it is not three miles from Meredith's place at Box Hill. I am very content with it, as it has a good library and a study for me that looks out over the hills to the sea and gives one the sense of being completely unconfined. I do wish it were August now.

The week since I wrote has passed very interestingly in watching from close at hand the making of the Cabinet. For me, as you can imagine, the chief joy is Sankey's appointment. He will be a really good Chancellor, for he has courage and integrity and wisdom. Most of the posts went by schedule; but I was very surprised by Webb's willingness to take office.¹ Evidently there is no "*nolo episcopari*" in politics, for only the day before he had insisted to me that he would not go into harness again. Two of my own colleagues at the School got office and one, at least, I was able to elevate from a very minor post to the under-

⁷ Mary Astell (1668–1731), author of *A Serious Proposal to the Ladies, Wherein a Method is Offered for the Improvement of their Minds* (1697)

¹ Sidney Webb, shortly to become Baron Passfield, was Colonial Secretary in the MacDonald government.

secretaryship of Foreign Affairs.² I had a long talk with MacDonald on Friday about America; and there I really hope for a settlement of our quite unnecessary differences in a big and generous way. Henderson, too, who asked me for a memorandum took my points with admirable vigour and I think no effort will be wanting to end the present irritability.³ I add as a footnote that the panting excitement of the aspirants to office made me grateful that I had not chosen a political career. To sit in the Prime Minister's room while he interviews the hopeful is like a meeting of assassins who have come armed with scriptural texts.

My days have been occupied with the grim business of writing memoranda for ministers. Of one great thing I am hopeful — that I shall get Sankey to set up a Royal Commission on Legal Education and see whether we cannot devote some of the immense funds of the Inns of Court to building a Harvard Law School in this country.⁴ At present, as you know, the whole system of teaching law here is thoroughly bad; and the lack of any recognition for the barristers who become professors of law means that outside one or two posts like the Vinerian professorship the law teachers are a very inferior set of people who mainly teach because they cannot make a success of the bar. I should like to end that, and I find Sankey very favourable to an attempt. Whether it would be successful heaven knows; for in England to attack a vested interest is always a difficult matter. But if we have a go at it, I think one or two fellows like Maurice Amos could be persuaded to sit and, if necessary, to sign a minority report with me.

In the way of reading, I haven't very much to report. I have read an excellent *Life of Godwin* by Ford K. Brown (Dutton) written just at that level of irony that the subject demands. A queer fellow, whom it is impossible to like or to admire; and yet he must have had a power in him to move the world as he did. The *Life* took me to *Caleb Williams* which I had not read in years, and despite Mr. Brown who thinks it a minor classic, I found it intolerable — *longueurs* unendurable in every chapter. But some Maria Edgeworth — *Belinda* and *Patronage* — were wholly delightful. I enjoyed, too, a book by my former colleague, Kingsley Martin — *The French Liberal Tradition in the XVIIIth Century* —

² Mr. Hugh Dalton (1887–) held a readership in Economics at London University when he was made Parliamentary Under-Secretary for Foreign Affairs.

³ Arthur Henderson was Foreign Secretary in MacDonald's Cabinet.

⁴ It was not until August 1932 that Lord Sankey appointed a committee, under the chairmanship of Lord Atkin, to consider the possibilities of closer coördination between the work done by the Universities and the professional bodies, and further provision for advanced research in legal studies. Laski was a member of the committee. Its report was presented to Parliament in July 1934. *Command Papers* #4663.

which, without novelty, still puts old truths in an attractive way. And a new novel of P. G. Wodehouse dealing with Mr. Mulliner, once more made me roar out in the tube until my neighbours must have suspected my sanity.⁵

I have hardly any history of purchases, though I have sent to Paris for a cheap set of the complete Diderot and have not yet lost hope. I went to an auction on Friday in search of some economic pamphlets of *circa* 1650 and had priced them — on catalogue values — on some such scale as 10/- each. To my astonishment they brought an average of nearly five pounds; I stopping my bids at 15/- I asked the bookseller who got them why he had bid so high for them. He replied that when I had begun bidding he assumed there was some special feature about them that he had missed, and that he better have them for safety's sake. So, my dear Justice, one pays for knowledge. It will amuse you to know, as an illustration of human insanity, that at this sale a long letter from Bernard Shaw explaining that he did not claim to be better than Shakespere brought two hundred odd pounds; and an incredibly stupid one from J. M. Barrie in which he drew a map of fairyland for a child brought nearly one hundred. One bookseller paid thirty pounds for a first edition of Galsworthy published in 1922. As you can imagine I am vowed not to visit auction-rooms any more for the present. They are a snare and a delusion.

Term, thank heaven, begins to look like ending, and though I have a fairly busy July, still the cessation of academic routine will be a comfort and then two months real freedom will be like water on parched grass. I have, too, some doctoral examinations to go through. I did one last week where the candidate had written on Montesquieu and I asked him what his book was intended to show. He replied with quiet simplicity that he considered his book the best general survey of M. in any language. One of his points was that M. owed a great debt to Gordon's *Independent Whig*; but when I asked him if he had read the latter it turned out that he had not. He made a great fuss about the separation of powers so I read him an extract from your dissent in the *Jensen* case⁶ and asked him what he thought of it. His reply, I think, ought to be classical "It is the business of judges to preserve and not to betray the principles of the American constitution."

Our love to you. Keep well, and see plenty of friends.

Ever affectionately yours, H. J. L.

⁵ *Meet Mr. Mulliner* (1928).

⁶ *Supra*, p. 643.

Beverly Farms, June 15, 1929

My dear Laski: Here I am — settled quietly — it is now a week since I arrived. Everything is pleasant and I drive, see my friends, and read a little and sleep in the process. Frankfurter and his wife made a very satisfying call. He relieved my mind by telling me that there was no danger of his leaving the Law School for Chicago — which I had heard rumored. I have a faithful follower, James Doherty, who thinks it his special duty to look after me. Some of my wife's relatives thought it well that he should come on to the funeral and he somehow established himself in charge of a good deal and managed things admirably. He drove down here with me last Saturday and didn't leave till Monday, after he had taken me to walk and satisfied himself that I was safe — solemnly exhorting me not to come to Boston without notifying him. He seems to think that I oughtn't to be trusted in the streets alone. I must tell you too that the moment he heard of my wife's death the Chief Justice at once communicated with Arlington and made sure that everything was ready. How can one help loving a man with such a kind heart? I have a lovely spot in Arlington toward the bottom of the hill where the house is, with pine trees, oak, and tulip all about, and where one looks to see a deer trot out (although of course there are no deer). I have ordered a stone of the form conventional for officers which will bear my name, Bvt. Col. and Capt. 20th Mass. Vol. Inf. Civil War — Justice Supreme Court, U.S. — March, 1841 — His wife Fanny B. Holmes and the dates. It seemed queer to be putting up my own tombstone — but these things are under military direction and I suppose it was necessary to show a soldier's name to account for my wife.

Your last letter received yesterday — ("4.VI.29") gave me the usual pleasure. I think you were entirely right in your answer to MacDonald, but not quite right as to Mrs. Schwimmer — I don't think the majority meant any more than that a person couldn't be attached to the principles of the Constitution if he didn't recognize that in case of need it must be supported by force, coupled with a recollection of the anti-draft talk during the late war. I couldn't help suspecting that their view was made easier by her somewhat flamboyant declaration that she was an atheist. I alluded to it discreetly without mentioning it, in what I said. (I was reading a book about the queer sects in the U.S., the last chapter of which was devoted to the Atheists, a society with a name, and pointed out that they were of the same timber as the others although inverted. The real solid unbelievers sit back with a smile — and are not 'asts for an 'ism.) After interruptions I have finished W. Lippmann's book. I was as much impressed as you were — and think it will hit a great many people where they live. I was delighted to hear from Frankfurter that it was

having a great sale. I wrote to him — but I fear mainly repeated things that I have said many times before. My only criticism, which is not one really, would be to quote Twisden, C.J. in Saunders' Reports — "Twisden C.J. said to Mr. Saunders, 'Why do you labour so? for the Court is clearly with you.'"

By and by the *certioraris* will begin to come in — but I may keep them until my secretary arrives late in July — he is a great help. I am reading Isadora Duncan's life of herself which is worth reading — [three words illegible] and I have begun a *Life of Erasmus* by Preserved Smith — I am told that he believed nothing.

Ever affectionately yours, O. W. Holmes

Beverly Farms, Massachusetts, June 21, 1929

My dear Laski: Your letter, delightful as usual, stirs thoughts and recollections. As to the Commission on Legal Education I have no opinion, but I note that somehow you make good lawyers under the present system. I can't help remembering what I said as to the President's Commission for enforcing the law¹ — on that also I am ignorant — but I said long ago in a speech that for most of the evil in the present state of the law I think the remedy is for us to grow more civilized.² Your lawyers are educated in a more civilized *milieu* and whatever the system of teaching, they show it — judging by the decisions that from time to time I read. The atmosphere is more important than the specific contacts. *Caleb Williams* calls up my boyhood. I think my father thought it the most interesting novel in the world. I read it and have pretty well forgotten it — but I remember a criticism of De Quincey, that the mystery was left unsolved because it had to be — no possible *dénouement* would be adequate to the row that had been made about it. I dare say I should agree with you if I read it now.

I hardly got the point of your doctor's candidate — as to the duty not to betray the principles of the Constitution. I thought, if I remember rightly, that I was standing in the ancient ways. I haven't read much since Isadora Duncan — lent to me, by the by, by that dear creature, Mrs. Beveridge. She seems to incline to all the modernists — in art as in literature, which adds a spice to our talk. I am just finishing another book that she lent me — a life of Erasmus by Preserved Smith — interesting but not interestingly written — and now I have the Tom Barbour's (E. M. Remarque) *All Quiet on the Western Front* — unexpurgated. I

¹ In May 1929, President Hoover had appointed a National Commission on Law Observance and Enforcement, of which George W. Wickersham was Chairman. Holmes's comment on the Commission has not been identified.

² "The Use of Law Schools," *Speeches*, 38, 39–40.

understand that only an expurgated edition is commonly accessible here. You know perhaps how refined we are in Massachusetts in the matter of morals in books! I haven't looked at it yet. I also have a reprint of *Folkways* — by the later Sumner — a well known professor of Yale. This Mrs. Curtis told me was more or less expurgated — but interesting — as yet also unexplored by me. I get letters from time to time that leave me silent and abashed — perhaps I told you that I answered one, that if the devil came round the corner and said: "You and I know that that isn't true," I should believe him, but while he didn't appear in person it fostered a hope that I had lived my dream. I am too much of a skeptic to believe it fully — and I don't think it very important, anyhow. I am conscious of the approach of the end — but I mildly hope it may wait for a year and ¾ to take me into 90. My love to you.

Affectionately yours, O. W. Holmes

Devon Lodge, 25.VI.29

My dear Justice: I hope all goes well with you; I read of heat waves in the Eastern States and almost perspire with you. Here there are golden days — bright and cool so that it is really a pleasure to work. Certainly I seem destined to work — a huge mass of exam papers, a number of doctoral examinations all clustered together, and perpetual memoranda for one or other friends in government. But it is all interesting and I do not complain, especially as the term ends on Friday and I am having a really good time working a day in each week with Sankey and seeing at first hand how the machine goes. My general impression is definite that a real 18th century atmosphere still lingers over the legal profession. Item a vacancy for a county court judgeship — over 400 people write in to the L.C. to press their claims, decayed silks, university professors, juniors who want a rest from turmoil and so forth. A vicarage to be filled produced 300 letters. Add to all this the people who send presents to the L.C. with a view to prospective favours, the men who write asking that he introduce them to the Attorney-General, others who want "silk" and were passed over on a previous occasion, and one is really startled at the extent to which, in this side of the work, patronage lingers on. Then I read certain cabinet papers for him and I should like to write an essay on what they imply. I reckon that he would have to form a judgment on sixteen different subjects which range from the recognition of Russia to the question of whether the Trades Disputes Act of 1927 should be completely repealed or merely amended. Sankey, thank heaven, is a real glutton for work and I have only either to write a memorandum or to indicate desirable sources of study and he is on to them like a hawk. I have also had some pleasure in drawing up a memorandum for

the Foreign Office on the successor to Esmé Howard. I mustn't speak about it, but you can imagine that it was amusing to put into writing the qualities one feels that our man at Washington ought to possess.¹ Felix, by the way, amused me (between ourselves) enormously by writing to me urgently to argue that the ideal Ambassador to appoint was A. N. Whitehead, the philosopher—who, to my knowledge, has never even glimpsed that kind of experience and is one of the most practically disorganised men alive! I would about as soon think of appointing Morris Cohen your Ambassador in London.

All kinds of queer people have come along lately. A Chinaman wanted me to become the professor of politics in a new university just where the brigands have lately trapped and executed three missionaries and explained that the professor would always have an army division at hand until things were stabilised. A Hungarian gentleman wanted me to write a book on the peace treaties in which it would emerge that Hungary had been badly treated and hinted just how much the government would be glad to pay for such a service. A large and ample lady arrived from a club in Sussex—"of the first families of the county"—wanting me to give three lectures in the winter on Parliament "with lantern slides"; she could promise me a guinea and expenses but the great attraction she had to offer would be that I could spend the night on each occasion in a famous baronial hall. Her way of putting it was that I could "spend the night with the Countess of—", but I assume that my gloss more accurately represents the facts, especially as the Countess is over seventy and, I hope, a little aloof from that sort of thing. Then I must not omit the young lady from Columbia who wants to study bail. She wanted an introduction to every magistrate in London; the Home Office; the Record Office "through all of whose records" she proposed to go. I suggested, perhaps wickedly, that she start with the last and sent her to a friend of mine there. He explained that she could begin with the 13th century and work forwards or the 20th and work backwards. Horrified she tried to insist that she must get everything done by August 1 when she was to join a party to see the sights of Stamboul. He explained that Miss Putnam² had been hard at one part of the theme for ten years and had only reached 1500. So the poor young thing came back to me and said that she had decided instead to write a piece on "A Day in a London Police Court." Finally I must put in the soft-voiced Anglican clergyman who wanted me to hold forth to the

¹ On December 31 Sir Ronald Lindsay (1877–1945) was appointed Ambassador to the United States.

² Presumably Bertha Haven Putnam (1872–), Professor of History at Mount Holyoke College and student of English medieval courts, particularly the Justices of the Peace.

"Community of the Resurrection" in July on the rights of the Christian Church. I explained that I never spoke to religious societies and that I was by belief an agnostic who disliked all churches. He looked at me in simple horror, told me that my mortal soul was in danger, and begged me to pray. I thanked him as courteously as I could and bowed him out. But he sent me a form of prayer and three or four little pamphlets obviously intended to help me out towards the light from the darkness in which I dwell.

Of other things there is not much to tell. I got my Diderot and my eyes dwell lovingly upon it as I write. I also got a beautiful copy of Rousseau's *Social Contract* in the first edition as clean and fresh as the day when it was printed, and an even more beautiful Bodin — edition of 1591 — bound by Derome in brown morocco.³

My love to you as always.

Ever affectionately yours, H. J. L.

Beverly Farms, July 9, 1929

My dear Laski: You have events and prominent people to write about. I have only the quiet doings of an old would-be recluse. But there hasn't been much recluse about it so far. People, all friends, turn up nearly every day, oftener than I want, and are apt to stay longer than I can well endure. An hour and a half — two hours at the outside, is as much as I can carry off without being tired — but last night one was here from 6 to after 10 — with no intermission except food. Well — I got a good night's sleep and didn't get up till a quarter to 9. I think it will stop now. The only fatigue for today is the dentist. But who does not tremble before the dentist?

Reading has been less than I wished. I have just finished a good book by the late Sumner of Yale, *Folkways*, the anthropological facts generally familiar but the conclusions and comments showing his fierce incisors. He does despise and explode phrases that serve as an excuse for not thinking. He speaks of the "jingle" "government of the people, for the people, and by the people" — which of course did not start from A. Lincoln. Also I read part of a book and the summaries at the head of the remaining chapters by General Smuts — *Holism and Evolution* — in which I failed to discover a new idea or anything to justify the General's evident belief that he is making a great contribution to philosophy. Do you know by inspection or hearsay whether I am all wrong? Barlow who was here Saturday-Sunday unearthed from my books some short stories by "Saki" — that are very good and amusing — and

³ The Derome family, a French dynasty of binders, produced its greatest figure in the eighteenth century when Nicolas Denis Derome, known as the younger Derome, was master of the bindery.

there has been other light stuff. The only interesting works are the dull books. I am slow to take up a novel nowadays — and I must look out for a *pièce de résistance*. I am like Dr. Johnson's dull boy who hesitates between two books while the clever Laski reads both. My routine you know. Mrs. Beveridge was here for luncheon the other day and I took her over to Newburyport to see the old house that perhaps you remember. We had a flattened tire that made it rather long for me — but it was a success. One day a delightful visit from Felix and his Mrs. I have not been able yet to go through Rockport and wish that you were there — but expect to soon.

Affectionately yours, O. W. Holmes

I hope you took to heart my remarks about civilization apropos of your desired Commission on Legal Education.

Devon Lodge, 9.VII.29

My dear Justice: I have been buried in the grim melodrama of examination papers; indeed I have hardly emerged. I hope that by next week university work will really be over and that I can begin to think of the humanities. But I have really hardly known where to turn this last fortnight.

Yet some pleasant adventures. A couple of private dinners with the Lord Chancellor have been illuminating. He really is a fine fellow — not a distinguished mind, by any means, but with balance, and a sense of what the French call *justesse*. I sit bewildered at the number of demands for posts that he receives, many of them from eminent "silks" who really ought to know better. One coolly wrote to ask for a forthcoming vacancy in the Lords as you might ask for a book in a shop. Then I had a good day in Oxford, where I had tea with my old tutor Herbert Fisher and heard some charming memories of you in the days when you frequented Leslie Stephen. I was interested by the effect of Oxford on Fisher after his years in politics. He obviously feels it a place of "small talk," intellectually constricting, and void of a big *ethos* of any kind. He made a strong plea for universities in great centres of population to make academic folk have contact with the big world. I am doubtful; but certainly some of the dons I saw were pathetically narrow in their outlook and did not seem to look beyond their own walled town. Then I went to a dinner of American professors in London and was interested by the contrast. The Oxford don is uninterested in the big world; the American professor is uninterested in the impractical. It was a curious experience to sit among men who spoke of men with money as the people who made universities great and to find a craving among them for the study of the immediate. Also I felt that they much too little

realised what I may call the significance of the impalpable and were reaching out after a quite illusory quantitative exactitude which in the social sciences at least has hardly a title to serious consideration. And for my sins I had a pathetic lunch with Graham Wallas who outlined to me his new book with the sense that he was announcing epoch-making discoveries.¹ He seemed to me to say (I) leaders in politics should lead (II) knowledge is important (III) Bentham was a great man (IV) be careful in your use of the deductive methods. Unless I am wildly astray these things were not unknown; yet he put to me these and kindred truths with an air of sweet complacency that would be grimly laughable were it not tragic. I must not forget the German *Geheimrat* who called with the most tremendous introductions, top-hatted, white-waistcoat, frock-coat. He wanted a bibliography of proportional representation and amused me profoundly by entering each title I gave him on a large violet card which he solemnly punctured with 1, 2, or 3 holes, according to whether I thought the particular book bad, indifferent or good. And the Indian gentleman who asked me for a brief opinion of the caste-system. I expressed my entire incompetence. "Sir," he said, "I will leave you two brochures of my own which amply illustrate my theme. In two weeks I will call again to glean your views after instruction." My protest that I could not form my views in that way went quite unheeded; and I believe he will be here again shortly with the confident expectation that his incredible pamphlets will have settled my views. One of them advertises on the back a mystic luck-bringer which enables the wearer, among other things, to make a fortune on the stock-exchange, beget a male child, and pass any examination. The other is full of the charms of "Kali-Perfume" which is guaranteed to make the person who uses it quite irresistible to men. Used, I gather, as a medicine it is a sovereign cure for female ailments. From all of which I conclude that my visitor was no ordinary man. Why he came to me I have not the remotest idea in the world; I do desire a modest competence, heaven knows; but neither a male child nor irresistibility to women has any special attraction for me.

I have got some nice books from Paris — mainly in the way of 17th century Utopias like Vairasse's *Histoire des Sevarambes*. But I am waiting with that anxiety you can appreciate for some ancient law books in a French catalogue some of which, e.g. Lambert's *Jurisprudence universelle*, 1776, (an attack on natural law) I have been looking for over years. But they were so rare and so very cheap that I do not dare to hope. In the way of reading, one or two attractive things deserve record. I don't know if you ever read Alexander's *Moral Order and Progress*

¹ *Social Judgment* (1935), published posthumously, was evidently the uncompleted result of Wallas's intention.

(1889)? I never had. I bought it cheap the other day and thought it in every way a most impressive performance — especially in its emphasis upon my pet theme that morality is necessarily social in character. Then Spedding's *Life of Bacon* which I found in a convenient two-volume edition and thought more interesting than any biography I had read in years — the perfect book for the long journey. And P. P. Howe's *Life of Hazlitt* which was both attractive and competent. I read, too, my young colleague Martin's *The French Liberal Tradition in the 18th Century* which I think you would like; it is particularly good on Diderot, Rousseau and Condorcet and is supremely well-written.

I have now made all the arrangements for coming to America next year. I shall get to Yale the first week in March and stay until June. They give me only 3 hours work a week so I hope to invite myself to Washington with decent frequency. You can imagine how I look forward to talk.

Our united love to you. I hope all goes well. I read with dread of your heat-wave.

Ever affectionately yours, H. J. L.

Beverly Farms, July 19, 1929

My dear Laski: You never write an uninteresting letter and the one just received (9.VII.29) is no exception. But you speak of your pet theme that morality is social in character as if you were an exception. I thought that people who count generally held that opinion. I believe I have mentioned that recently I read Sumner's (late of Yale) *Folkways* — one of the main theses of which is that given certain *mores*, established by convenience, superstition, and what not else, the philosophers, accustomed to them, proceed to demonstrate that the principles of conduct invoked are *a priori* necessities of human nature although in fact only the outcome of particular habits of their community. I wish I had you as near as Rockport (I drove round there the other day) to give me a good *pièce de résistance* or two. The only one I have now is Hermann M. Roth, *Der Trust in seinem Entwicklungsgang vom Feoffee to Uses* etc., which I read with a dictionary. It is only about 300 pages but I have little time and read slowly. The author sent it to me last term, asking me to criticise it. I had to tell him that I was 88, very busy, and read with some difficulty, but I have got far enough to have written to him that I was getting pleasure and profit from it. Naturally pleasure, as he gives me full credit. It seems to me well done, though one or two suggestions of his seem doubtful. I told him that for nearly 50 years I had been thinking on other themes. I have read some light stuff, *e.g.* *Magie noire* by P. Morand and some short stories by Saki which were in the shelves here but which seemed mostly new to me when Bob Barlow unearthed them the other day. Saki is often funny, but other

tales have a streak of cruelty in them, as does the French book. In my old age I prefer kindly pleasant things. And some little poems by women, Elinor Wylie *et al.* I preferred the *al.* to E.W. Little whiffs of semi-mystic emotions over happenings of the earth, sea and sky with a touch of sex, of course, in these days. I have heard women say that women were coarser than men, possibly true. A dame occasionally comes to luncheon with me, Mrs. Beveridge, (a dear, sad creature), Mrs. Curtis, Mrs. Codman, and men have come pretty frequently to call. I get tired after 2 hours. When Bob Barlow was here for Sunday (a prescriptive right of his, I don't generally want people for the night), W. Lippmann came in in the morning and was very pleasant. He seems like a real friend though I see him very rarely. I received a communication in abstraction the other day saying in part, "When mental strabismus causes a jurist of supreme position and attainments and of illustrious family to be under the hypnotic control of a shrewder fellow-jurist whose every underlying line of action is to the end of world-control by his race of atheism, free-love and anarchy the future is indeed black for civilization." This is strictly between ourselves. I should hate to have it come before the eyes of a shrewder fellow-jurist. I thought it best not to answer. Indeed it was in the form of an ejaculation not addressed to me except on the envelope. You see how little I have to tell, I rejoice in the hope that I shall live to my next birthday, March 8, and see you in Washington.

Affectionately yours, O. W. Holmes

Devon Lodge, 22.VII.29

My dear Justice: I emerge from a heat wave, a little wan and pale, to tell you that your letter gave me deep delight. I take your warning to heart about our enquiry into legal education. I don't think we shall do much harm, and there is a chance of effecting good. Sankey, moreover, is a cautious person, and people like Winfield, Scrutton L.J. are not likely to go far wrong.¹

The days have passed happily, and are very full. I lunched with the P.M. the other day to discuss Anglo-American relations. He was very sensible, and, I think, clearly on the right lines; and as he has a great regard for Hoover I think their minds will keep in step. Then a charming dinner with Sankey to which I took Maxton,² the leader of the extreme Labour people. M. is a very delightful fellow, one of the most popular people in the Commons; the two took a great liking to each

¹ Neither Mr. Justice Scrutton nor Professor Winfield was on the Committee which was appointed in 1932. See, *supra*, note 4, p. 1156.

² James Maxton (1885-1946), Chairman of the Independent Labour Party, 1926-1931, 1934-1939.

other and I think I did a good job over a point that interests me — the definition of “capable of work” in the Workmen’s Compensation Act, on which I want the law altered in the sense of Shaw’s dissent in *Bevan v. Nixon* in 1929 A.C. which perhaps you know;³ and I am fortified by the opinion of Leslie Scott that it is a necessary change unless the whole purpose of the Act is to be nullified. Then a jolly dinner at the House with ten young Tory members and Baldwin *père* who wanted to cross-examine me about Labour policy. They were charming people and, as always, I got on superbly with Baldwin who is a dear. (I wish our own chief were as attractive.) I add a party here to which about 70 people came. The most amusing moment, I think, a fight between Arnold Bennett and H. G. Wells over the merits of Aldous Huxley. H.G. insisted that he committed the first great sin in being unable to tell a story and that he was pretentious. Bennett said he was a great stylist in quest of material. They fought like cats. I must tell you too of the young Jap who was introduced by Frida to the Foreign Secretary and said with great gravity that he hoped Mr. Henderson was not “bursting by the explosion of responsibilities” — a new form of the time-honoured phrase.

But it has not all been play. The Ministry of Labour sent me down to Oxford to settle a builder’s strike and later to Cardiff to settle a threatened strike over an alleged wrongful dismissal. The first was easy; but in the second I had to sit as a court for two days, and to listen to excitable Welsh witnesses with the thermometer at 90° is not an easy task. I had great difficulty too when I ruled out evidence as inadmissible. The dismissal was for alleged insubordination; and witnesses wanted to tell me everything about the man from the way he treated his wife to the moral reputation of a sister who was a chorus girl; and bitterly angry they were when I said I could not receive evidence on any question except alleged insubordination. However, I got my way and at least 1000 men are still at work which is the main thing. I have also examined three candidates for the Ph.D. one of whom I had to fail. I thought he would be angry or disappointed, but to my surprise he seemed delighted. I made enquiries and found that he was a fervent Indian nationalist who wanted one more excuse for hostility to the British and found it in my decision that a thesis on Currency in China was not worth a doctorate. You must

³ In *Bevan v. Nixon’s Navigation Co.*, [1929] A.C. 44, a majority of the House of Lords held that the phrase “able to earn” in the Compensation Act was to be interpreted to apply to the worker’s physical capacity to work. A collier, incapacitated from doing underground work which was available, and who, because of existing labor conditions, was unable to secure surface employment, was therefore held not to be entitled to compensation as an injured underground worker. Lord Shaw of Dunfermline and Lord Blanesburgh dissented. The statute was amended in favor of such workers in 1931 (21 & 22 Geo. V, c.18).

admit that the way of the professor is very hard. Here am I destroying the British empire for the sake of the intellectual standards of the University of London. *O tempora! O mores!*

In the way of reading, there is not much of special significance to report. I read a not uninteresting book on your constitution by H. L. McBain, and, in the way of work, an extraordinarily able book on the medieval papacy by Gosselin. And, also for work, a good book if dull on Spinoza by one McKeon which gave me some useful leads. But, to be truthful, the main discovery of the week has been the new novel of P. G. Wodehouse which is perfect joy,⁴ and a good story which Diana found of Mrs. Gaskell I had not read before, called "Sylvia's Lovers." I add, for your benefit, that the Oxford Press has just reprinted one of the most charming tales Anthony Trollope ever wrote, and one much too little known called *Ayala's Angel*, which I commend to you as pure delight.

I have also had some book-luck from French catalogues. I got some nice contemporary criticisms of Montesquieu — one of which, *Abrégé de Bodin* by Lavie is extraordinarily interesting as working out in detail the relationship between Bodin and M. and so far as I know hardly noticed in the literature. Then a number of 17th century imaginary voyages, one of which, by Denis Vairasse, has clearly a real connection with Rousseau that I have still to work out in detail. Also I found the Adam and Tannery Descartes — a noble edition — and read or dipped into the correspondence for the first time and concluded that Descartes was an insufferable prig for whom affection must have been very difficult indeed. And out of sheer extravagance I bought a first edition of Hume's essays, though it was cheap and found that my copy had belonged to Jeremy Bentham and was carefully and wisely underlined by him. I bought also a first edition of the *Communist Manifesto* with two pounds and sold it to an enthusiast in these matters for ten, with a great feeling of virtuous satisfaction.

We stay in town another week, until Diana ends school. Then, at length, the country. I long for it and the situation is so perfect that I feel special joys await us.

Our united love to you. Keep well and don't do too much. Please give my salutations to Mrs. Beveridge. *Ever affectionately yours, H. J. L.*

Beverly Farms, August 4, 1929

My dear Laski: Your last letter is full of events and interesting facts. You don't name the new novel by Wodehouse, but seeing that in consideration of you, F.P. and Mrs. and Charley Curtis, I have just taken

⁴ *Fish Preferred* (1929).

Emma from the local library, I won't bother for the moment. You see I don't have much time to read. The occupations of idleness take time (driving, sleeping, solitaire, etc.) and now just as my secretary and I had finished 79 *certioraris* another bag full of them comes, the heap looks to me 30 or 20. Also for my odd minutes I have Eddington, *The Nature of the Physical World* which reminds of the little book *Eos* just read as it also provides for the end of the universe. I think the scientific men weak when they get into the realm of philosophy and in speculation as to beginning and end I think they are perilously near forbidden ground. I don't believe that we have any warrant for believing that we know cosmic ultimates and think therefore we had much better content ourselves with recognizing in good faith that we are finite creatures and can't formulate the infinite. Eddington thinks that blue and red are subjective facts but wave lengths objective, *i.e.* that by translating our visual image into another he has reached a different sphere of being. I don't see it but I won't stop to criticize details. The book is very interesting, but I feel the omnipresent domination of what he is more accustomed to over his thought. (I am not quite sure that this hits what I have felt but it seems so at the moment). I have read some more Saki stories. He is an amusing and witty bird, but seems to live in the world of repartee and of fashion. It limits the interests of one to whom London society is not sacred, but it is entertaining. To how many Britons, "We don't do that in England," is the last word. I probably have told you of my wife's answer to this remark on one occasion, "That's why we came to this country." I would fain continue but a little cousin soon is coming to luncheon with a boy — and after them a dame, and I get very little repose though I long for it. My love to you all. I think of myself now as under the sword of Damocles and try to feel so, but I am afraid that daily interests interfere. *Affectionately yours, O. W. Holmes*

As from Devon Lodge, 2.VIII.29

My dear Justice: We arrived down in the country yesterday; and the first thing that greeted me was a delightful letter from you. I was particularly impressed by your remark about Walter Lippmann. I don't, I suppose, see him more than once in two years; but I always find that we can take up the threads and plunge *in medias res* without any difficulty. He hasn't, I think, the sheer genius for friendship that Felix has. But short of that he is one of the people on whom I can build with absolute assurance.

Life has flowed as rapidly as ever since I wrote last. Mainly — I need not say that this is between ourselves — I have been engaged in working with the Prime Minister on his American problem. It has been very

interesting and I have great hopes of a successful issue. My main job has been twofold. First I have been trying to explain that the discussion of maritime law ought to follow and not either accompany or precede discussion on naval strength; this I think is now common ground. Second, I have been arguing that naval parity is a phrase which is elastic and not rigid. Our needs and yours being different, it is the technician's business to find formulae of transference in gun-power and torpedo power. The politicians must then agree on a total and leave each party free to work out what that total means in terms of its own view of its needs, the main safeguard lying in an agreement to communicate frankly the grounds of interpretation taken and the actual details of construction. The P.M. has agreed to this and sent it on with approval to Hoover. The latter is being quite admirable, intelligent, perceptive, and properly urgent. So granted the will to succeed, I think the negotiations cannot easily fail and that when MacDonald goes over in October, he should find things very smooth.¹ I wish I could accompany him then. He was kind enough to suggest it, but I told him (I think wisely) that my one wish was to avoid anything which suggested an official connection with the government. As it was, I remain available whenever advice is offered, and, as he himself said, it is useful to have someone who is kept informed by him and can criticise without responsibility or subordination.

My part ended yesterday and it has been a hectic job. The one other thing of interest was a dinner party with Wells and Bennett. Some of their judgments may amuse you. They agreed that the post-war Galsworthy was definitely uninteresting, that he mistook the sentimental for the humanitarian and, accordingly, thought that any soft-hearted person was fulfilling the Gospel ideal. They thought that American fiction curiously reflected the ideal of mechanical standardisation. Many people wrote good fiction efficiently, but apart from two or three, Lewis and Willa Cather, no one so wrote it as to strike a definite note of outstanding individuality. Wells said that he was convinced that few Americans had ever equalled Hawthorne in style, and that as the years went on, he put him ever higher, though he thought *Moby Dick* the greatest single work an American had done. Bennett told us a good story of a visit to Paris where he found himself in a company of American and English literary exiles. They explained to him that he was quite devoid of literary significance because (a) he had invented no new forms (b) he had no power of introspection (c) he did not realise the insignificance of insignificant people. One genial Chelsea-ite explained that he him-

¹ In October, MacDonald went to Washington for conferences with President Hoover concerning naval disarmament and other international matters of common interest.

self had been compelled to leave England because ordinary people were regarded as important and he found, accordingly, that he was treated without appreciation. An American literary gent then went on to complain that the reviews would not print his bitter descriptions of sex and that American women did not want to live with him without marriage. Bennett suggested Constantinople and concubines; whereupon the literary gent. said that he found the idea of any union of more than a month oppressive: "I must," he said, "preserve my free soul." So Bennett told him that what he really wanted was a month of hard labour without any fixed income and the man left saying that he could not endure the blasphemy of the successful bourgeois. I hazard the guess that the unsuccessful man of letters is about the worst type of egoist in the world.

In the way of reading, I have not very much to report. An admirable *Life of Byron* by Ethel Mayne, which struck me as the most sane portrait of a person very difficult to be sane about that I know; a queer book by a French professor, Julien Bonnecase, *Science du droit et romantisme*, an attempt to show that Duguit and his school are the legal expression of all that is worst in romanticism, with Duguit especially figuring as its Rousseau; and a very good book by Jean Cruet, *La vie de [sic] droit* — a book which reminded me a good deal of Ehrlich's work done with the *verve* and precision of a really good French mind. And in the way of fiction, a really good detective story by J. J. Connington called *The Case with Nine Solutions*, which I earnestly commend to you, and an amusing comedy of Wodehouse's — previously unknown to me, but not new, called *The Little Nugget* — that fellow is really pure gold and ought to be compelled to immortality.

We are going to be very happy here. The house is adorable, with a view of indescribable loveliness. It has a garden of thirteen acres full of flowers with a great mass of lupins and hollyhocks under my study windows. We are so high that from where I write, on a clear day like today, I can just see the sea, like a silver band on the horizon, though it is nearly 30 miles away. I am writing each morning and after dinner and playing in the afternoons and early evenings. With luck, and the vein, I hope to write my three Colver lectures for Brown (which I have to print)² and to get started on my Dodge Lectures for Yale. But the main thing is the sense of perfect peace here. Even the nearest house is over four miles away.

My love to you as always. I do wish you lived next door.

Ever affectionately yours, H. J. L.

² Laski was forced to abandon his intention of delivering the Colver lectures at Brown and the Dodge lectures at Yale. His *Liberty in the Modern State* (1930), however, was made up of the undelivered Colver lectures.

Beverly Farms, August 11, 1929

My dear Laski: Your conversation between Wells and Bennett is interesting, though I don't value such wholesale judgments as the one you quote about *Moby Dick*, great though I think it. I am pleased at the "blasphemy of the successful bourgeois" and think you very well may be right about the unsuccessful men of letters, except that when I use the word in a derogatory sense, I say Egotist not Egoist. I shall try to get *La vie du droit* and I should send for Wodehouse's latest stories if I remembered their name, but Bob Benjamin, a former secretary, was here today and said he would send them on. I shall write for *The Case with Nine Solutions* by this mail.

I am drawing a free breath having sent back the last bag of cases (*certioraris*) all — 123 in number — done up to date. Also I finished Eddington's *Nature of the Physical World*, interesting and instructive, but which I should criticize much as I did Jeans's *Eos* the other day.

F. Pollock walked into Sumner's *Folkways* in reviewer's fashion, taking it as an attempt at anthropology and pointing out omissions which I thought all wrong.¹ I take it merely as an illustration of how much depends on *mores* and how propositions become obvious and universal by people being accustomed to their premises. I think I told you of laboring with a dictionary over Dr. H. Roth, *Der Trust*, in which he grovels and is polite to me, and of amusing leisure moments with Saki's tales which I still do. Also, *nè fallor*, I told you of taking *Emma* from the library out of deference to my friends who love Miss Austen. I have been too busy with law to read more than the first five chapters. If I spoke the truth I *am afraid* that I should say (mind, I do not yet say it) that I found it tedious twaddle. I want another serious book. I don't know what. I wish I had the *Vie du droit* on hand this minute for I suppose another bag full of cases will soon be here. Rockport charms me as much as ever, and I don't think it noticeably changed, except that you are not there. FF was here and gave me more facts I didn't know about Brandeis that made him more than ever a great and good man.

Affly yours, O. W. H.

Hurtwood House

Albany near Guildford, 12.VIII.29

My dear Justice: I cannot even begin to describe the indescribable peace of this place. Except for an occasional aeroplane, one hears nothing of the outside world except by going to find it; and you awaken in the

¹ 2 *Holmes-Pollock Letters* 246 et seq.

morning to the thrush and the quiet plash of a stream at the end of the garden. The result is that I work marvellously here. I write all morning, usually getting five pages done in three hours. In the afternoon we drive around, walk in the early evening and read after dark. It is a great existence to which I think I could devote myself quite easily for six months in the year.

We have seen no one since we came here, except yesterday when we motored over to the Webbs for tea. They were in good form, and I was both amused and instructed. Amused, above all, at their tales of difficulties among the wives of cabinet ministers over the nice questions of precedence at court and over the eager rivalry to arrange that their daughters shall be presented in due form. Instructed by Webb's tales of cabinet technique I find myself amazed and disturbed by the immense discretion left to a Minister in his department. Henderson for instance has just concluded an epoch-making negotiation with the Egyptian Prime Minister only one detail of which, and that by no means the most important, was ever before the Cabinet;¹ and one begins to wonder, a little dizzily, what exactly collective cabinet responsibility means. I was interested in another thing. I told Webb of several young men in his department whose ability I knew at first-hand, and suggested that he take the pains to meet them. Webb explained that he could not do that except by the mediation of the permanent secretary. So I asked him what percentage of his officials he had met, and it appeared to be something like ten. Haldane used to take the most special pains to know everyone who did important work for him. Webb seems quite content to know only those selected out for him to meet. He agreed that it was a wrong state of affairs, but seemed unwilling to take steps to alter it.

In the way of reading I have wandered mostly over the books in this house. A good chunk of Dickens, always pleasant and often delightful; some Scott, but usually found unendurable after fifty pages, especially in its descriptive passages; two books of Thucydides, which are beyond praise, especially the account of Athens and the Melians which makes one see how entirely unapproachable he is; and the *Confessions* of Rousseau in a new French edition by Seillière with a greatly improved text which I submit to you as quite unexceptionably the greatest autobiography in the World. I also read a queer book on the American

¹ The negotiations between Henderson and the Egyptian Premier, Mahmud Pasha, had resulted in specific proposals, to be submitted to both governments, under which British authority in Egypt would be greatly curtailed. The hopes for settlement of outstanding differences were disappointed in May 1930, when negotiations were abandoned as a result of disagreement concerning the status of the Sudan.

University, sent to me by the publisher, called *Undergraduates* and done by some Y.M.C.A. gents. It made me want to be sick quietly in a corner. Their tests of goodness seem to be complete religious faith and no kissing. If this is the condition all is well. But they are horrified by the prevalence of religious doubt and the youth who can't resist kissing a pretty girl. They find Satan peeping round the most inconceivable corners. I wish I could write somewhere about the state of mind it reveals. They want a world of people like the Mother and children in the Fairchild family;² and they attack the wicked men of science who disturb undergraduate faith. X is called splendid because he always explains to the students that they must never allow their reading to disturb their religious faith. The assumption seems to be that knowledge is always a threat to the soul and that the best kind of college professor is the one who remains faithful to what he learned at his mother's knee. It is also interesting that most of the pious replies³ indicate students quite unable to write decent English and that many of the religious professors are in the same case. But the book is quite interesting for its revelation of a university world in which obviously the university ideal as you and I would understand it is simply nonexistent.

Other news I have none; but I want to tell you that I am alive and to send our love.

Ever affectionately yours, H. J. L.

As from Devon Lodge, 20.VIII.29

My dear Justice: Life flows on more peacefully than I have ever known it; certainly this is the most tranquil holiday I have ever known. My book goes on like a house on fire; and, at least occasionally, I get a sense that what I have been saying it is really worth while to say. I find myself defending the good old-fashioned thesis that I really may not know what is best for me, but that if I am not allowed the chance to find out, there will be no "I" left at all to make decisions. And so I am thoroughly enjoying myself by attacking all bureaucrats and moral reformers on the ground, for which I crave your agreement, that the supreme blasphemy is the endeavour of the creedmonger with a principle to enforce to make man in his own image. It is, as I say, old fashioned. But I think too that most modern psychology gives it ample support by showing the frustration of impulse always leads to repression; and

² Mrs. Mary Martha Sherwood's *The History of the Fairchild Family; The Child's Manual* (3 parts, 1818-47) was laden with precepts of high morality.

³ Much of the volume was made up of interviews with undergraduates and members of faculties in American colleges.

what they call "sublimation" is only possible in a controlled society for the people, like your late lamented Antony Comstock, who luxuriate in prohibitions.¹

I am glad you have had a go at *Emma*; I shall await your comments with great interest. I don't for a moment claim that Jane Austen was more than the supreme miniature painter. But I do say that within the little world she chose to paint no one ever surpassed her. She gets colour, variety and even profundity in a quite amazing degree. Take *Emma* and ask yourself whether the little old voluble spinster has ever been better done than in Miss Bates; or the complacent clerical snob than in Mr. Elton; or the dull hypochondriac than in Mr. Wodehouse [*sic*]. *Emma* herself I found intolerable. I would rather commit suicide than marry her. But she is a real creature of flesh and blood. The only failure in the book, and it is a partial failure only, is Jane Fairfax, who is always, I think, faintly seen and never quite realised. But everyone else one would know at once in a village inn. Mind you, I find Jane Austen at her best in *Pride and Prejudice* where Elizabeth, Mr. Collins, and Lady Catherine seem to me *hors concours*; and I am human enough to admit *longueurs* in *Mansfield Park* where I always wanted Fanny Price to marry Henry Crawford and be deserted, or, better still, be seduced by him and taught to live less of the life of a Christian saint for one day. But these things apart I do think it genius of the first order to be able to take a set of perfectly ordinary people leading dull ordinary lives and make you feel that the uneventful events in those lives not only happened but were vastly important. And for that view I should go bail to an unlimited amount.

Of reading I have done a-plenty. One or two queer things invite comment. I found a "complete works" of Lytton here in the proper marble-calf and so read two of him. One, "What will he do with it?" was like Hollywood's conception of a social drama and quite too awful for words. The other "The Coming Race" — a Utopia, was really interesting, not least because of its assumption that the ideal world is necessarily static. Then I read a reprint just published here of *Ex parte Milligan* with a long introduction by one S. Klaus (not very good) and a full report of the trial before the military commission.² What moved me most

¹ Anthony Comstock (1844–1915); officious foe of all vices but his own, he was the Secretary of New York's Society for the Suppression of Vice and the spiritual father of Boston's Watch and Ward Society.

² In *Ex parte Milligan*, 4 Wallace 2 (1866), the Supreme Court held that beyond the actual theater of war a military commission has no jurisdiction over civilians and that the petitioner, convicted by a military commission of conspiring against the United States, should be released in *habeas corpus* proceedings.

was the appendix with the report of Taney, C.J.'s decision in the *Merryman* case³ which I thought a very moving and pathetic piece. I was led to compare the whole with Halsbury in the *Marais* case and sent up to London for the *L.Q.R.* with the articles of Dicey and Pollock *et al.* anent it.⁴ I must say, with great respect, that I thought Halsbury dangerously and hopelessly wrong, and Dicey absolutely right as against Pollock. I don't know what the standing of the decision in *Milligan* is with you nowadays; after your need to dissent in that wire-tapping case⁵ I could believe almost anything. But I hope it stands as high as it really deserves. I read too a volume by Geny on modern legal philosophy — a very good analysis from the angle of neo-Catholicism and especially good in its criticism of Duguit. And as there was a Sheridan here I read three or four of the plays in bed and enjoyed them much, finding one or two known only by name like *The Duenna* and *A Trip to Scarborough* quite amusing. Also I must mention a *very* good detective story which I enjoyed heartily by Agatha Christie — *The Murder of Roger Ackroyd*. I thought it a real *tour de force* of ingenuity, but that may have been because I was completely deceived.

We have seen very few people. But the Lord Chancellor came over for a night and we had good talk. He's a fine fellow, high-minded without obtrusive moral principle and full of shrewd judgments. He has a judge to appoint in the autumn and we had a jolly time compiling the "points" for and against possible candidates. At least I spiked the guns of one fellow who is always devoting his leisure to attacking prostitutes and calling for their official regulation — the type to whom *Candide* is really a sin against the light. The Webbs also came over for an afternoon and we gossiped very happily for a couple of hours. His open-mindedness and freedom from vanity are quite remarkable. She is, of course, extraordinary in her way, but not intellectually in his class; and she has a bundle of *idées-fixes* which prevent discussion as soon as you come up against them. If I say that one of them is the universal efficacy of prayer, you will sympathise with me. As I told her, I refuse to pray o' nights to an unknowable and dubious somewhat because she derives satisfaction from genuflection. I must, I think, also record the visit of a gipsy (a colony is scattered hereabouts) who in return for a shilling and some tea told me that an American would leave me ten thousand pounds and that my name would be famous in Court; whether the latter meant

³ In *Ex parte Merryman*, Fed. Cas. #9487 (1861), Mr. Chief Justice Taney had held, on circuit, that Lincoln's suspension of the writ of *habeas corpus* was unconstitutional.

⁴ See, *supra*, pp. 553, 764.

⁵ *Supra*, p. 1067.

St. James' or the Police Court she did not specify. Frida is painfully sceptical about that ten thousand pounds, so we are not buying a new car at present.

Our love to you. A note from Felix seems to suggest he saw you recently; and one from Cohen means that he is moving towards you. So I know you are not dull.

Ever affectionately yours, H. J. L.

Beverly Farms, August 23, 1929

My dear Laski: In answer to your letter of laborious peace in the country I have little to tell. Again I have finished the *certs.* sent to me and now am 153 to the good. At odd minutes I am reading Allen, *Political Thought in the Sixteenth Century*, sent to me by F.F., originally I think recommended by you, which seems to me A-1, altogether admirable. In the crevices of the odd minute *Fish Preferred* — which makes me smile but not guffaw. Perhaps, as my secretary suggests, because I steal a quarter of an hour from solitaire for Saki, whose 7 volumes I haven't quite finished. Saki *aliquando* [illegible] but he bites. From time to time I see Mrs. Codman, Mrs. Curtis and Mrs. Beveridge, and once in a while others. But getting up comfortably and driving every afternoon and answering letters cut the day to pieces and time flies. This month is always trying for me to keep well in, but I have done it so far. I still get letters from lonely enthusiasts who shout over my dissent in the case of a dame who was not allowed to become a citizen because she was a pacifist. I had one this morning (also my D.C. tax bill, bigger than I hoped). I told one of them that it was moral sympathy not legal judgment that led to his encomiums. I have been interested in some modernist paintings. It seems to me that they have tried to think and thought inefficiently. They say we don't compete with the photograph but they admit in their practise some reference to the visible world, and yet they put in houses and bowls that plainly won't stand up, and in that way, when seeking, as every work of art must, for an emotional response, begin by presenting an absurdity that strikes us quicker than the remote harmony we are intended to feel, and interferes with their effect. They also say they are trying to express themselves, but they exhibit, and no one cares a damn about the personality of the painter, and it would be a pure impertinence to offer it for inspection. In fact, if they have any talent, they are trying to express something in nature that most of us fail to see, which is laudable and it is a pity to hamper the effort with absurdities.

Only a few days more than a month here and then, if I live, Washington.

Affectionately yours, O. W. H.

As from Devon Lodge, 28.VIII.29

My dear Justice: I picture you as emerging painfully from an ocean of *certioraris* to find humanity in Rockport — dear city of unforgettable delights — and, sniffing a little audibly, in *Emma*. I don't deny — let me emphasise it — that *Emma* is small beer, but what a taste the beer has. It is champagne *in petto*.

Things here move peacefully to their appointed end. We go back to town on Saturday; a week there and then a week in Manchester — my annual offering on the parental altar. Then I go to Cardiff for, I expect, two or three days to arbitrate on a new wage-schedule for the shipyards; I hope to prevent a strike of five thousand men. But I am sorry to leave here, for its perfect tranquility has been quite exquisite.

We have not been entirely alone. Nevinson came over on Saturday for the day, and, as always with him, we had good talk. We agreed in disliking all the art for art's sake school on the twofold ground (a) that they don't know how to tell a story and (b) that they seem to view happiness as an indefinite extension of the genital impulse. We agreed also that Felix is the most remarkable person under fifty in America and that Hackett's *Henry VIII* is mostly brilliant eyewash, wholly lacking in the power to discriminate in the quality of the evidence he uses. N. by the way is probably going to Washington with MacDonald in October and looks forward, lucky fellow, to seeing you then. As soon as I am back in London I will send you a copy of his little pamphlet — *The English* — which is, I think, a charming piece of delicate irony. I had also to see me an Australian gent. whom you would have adored. He primarily wanted me to go out there for an enormous fee to give lectures at his pet university. But he also wanted to talk — I beg his pardon, he *did* talk — about the ineffable and unlimited glories of the incredible Benjamin Kidd. Do you remember that third-class charlatan? My Australian began each other sentence with "As Kidd says," or "As Kidd has admirably remarked." At length I genially hinted that Kidd could not count me among his disciples. He remarked that he placed Kidd next to Darwin. I bowed. He asked me where I place Kidd. I replied that in my judgment he would have been an eminent ornament of Mrs. Leo Hunter's salon, and upon my word of honour he took it as a compliment and went away treasuring it up for future quotation.

I have been writing a good deal at my book, and it really looks like a book. There is a section on the sphere of conduct to which problems like prohibition belong which I think will appeal to you; and an attack on the fussy righteousness of those who like to rule other people's morals for which, in due time, I shall claim your sympathy. The whole atmosphere of the book is a plea for liberty in terms of scepticism *i.e.* we

never know enough to suppress, and Jones' experience builds principles for him which can only be disproved for him by rational proof that other experience has superior validity. I think there is something in it; at least the fact that I enjoy writing it means that it is less bad than I feared when I started. And I have really got new ideas and new lights on the relation between liberty and equality.

In the way of reading I want especially to emphasize two things (I) Robertson's *History of Free Thought in the 19th Century*. I have an advance copy of this (it is published by Watts) and I conjure you to get it. To have a clear and vigorous summary of one hundred years of critical attack on the positions of organised religion is quite thrilling. He has a conspectus of all Europe and the U.S., though naturally the bulk is England, France, Germany. I am interested to see how well Emerson and your father come out. Of course there are judgments I dissent from; e.g. I could not praise Bob Ingersoll whose writings, to me, have always indicated a windy rhetorician, even if he was on the right side. He has a brilliant attack on Lotze and an interesting swipe at the intellectual fatuity of Whitman's metaphysics. And on the vulgar tactics of Rome and Canterbury in trying to patch up the legend he is superb. I like, too, his *exposé* of Morley's lady-like feelings about free-thought — his queer effort to be at once sincere and undamaged socially by honest thinking. Do get the book; it will give you, as it gave me, some very pleasant hours. I have had, too, an interesting volume of unpublished letters of Galiani and Mme. d'Épinay — sidelights on the decline of the *Ancien régime* which repay the price of admission.¹ Eighteenth century Italy must have been a cesspool. Unbelievers avoiding discovery and fanatics gloomily searching for them. By way of novels I've read *Anne of Gierstein* and thought it third-rate, and *Old Mortality*, which I thought first-rate. I wish I could understand the process by which those novels made a man like Newman receptive to Rome.² I suppose age withers the flavour of context hopelessly; but certainly I am not attracted by the picture and Chateaubriand, whom Newman adored, seems to me an ignorant sob-orator for whom nothing is to be said except as a somnolent.

Our warm love to you. As I write, the horizon is so clear that I can just see the sun on the Channel nearly forty miles away.

Ever affectionately yours, H. J. L.

¹ Probably *L'abbé F. Galiani correspondance avec Madame d'Épinay, etc.* (2 vols., 1881–82).

² Cardinal Newman had said of Sir Walter Scott that he had "contributed by his works, in prose and verse, to prepare men for some closer and more practical approximation to Catholic truth." *1 Essays Critical and Historical* 268.

Beverly Farms, September 9, 1929

My dear Laski: A dear letter from you just received. I rejoice at the thought that I may see Nevinston and agree with you and his conclusions as to many of the modern painters and writers. I sometimes fear that my own evil nature suggests unfounded modernities. The new generation has discovered the act by which it came into being and is happy in the discovery. I am much interested in your criticism of Hackett's *Henry VIII*. I could not have made it, but I dare say you are right, though I don't know what, exactly, you have in mind. I shall try to remember what you say about Robertson's *History of Free Thought in the 19th Century*, as I understand not yet out, or I should send for it now.

After finishing my *certioraris* for the present (I wrote to the clerk today to send me what more he has not later than the 18th, for the end approaches) and having read *Political Thought in the 16th Century* I begin to reread the French translation of *Anna Karénina*. (By the by I suppose the accent over the *e* merely indicates the pronounciation of the vowel, not the accent of the syllable?) I hate it; I dare say it is one of the greatest of novels, but I resent having my time taken up by the woes of a woman of society ideals and a man who has nothing but social and physical attraction. Vronsky seems to have been less of a person than Anna's husband, although the latter did have big ears. Then the little jealousies of Levine after his marriage annoy rather than amuse me. Altogether, now that I am $\frac{3}{4}$ through the book I wish it were in hell.

I don't know whether it is the extra pressure of the atmosphere on some of these damp days or the knowledge that I am near the end that makes me rather gloomy. I was going to say indifferent when I remembered that half an hour ago I was fidgeting over a question of investment and that I still want to write and read (solid books, not novels) if it is worth thinking about. One would like to have a glimpse of the meaning, or I know not what transcending meaning of the universe before one dies, but one who thinks as I do perceives that he has no right to make the demand, but should shut up and go under quietly like a good soldier. I am happy to get Swift's *Journal to Stella*, which I never read. Frankfurter and his Mrs. are expected here Thursday and occasionally a dame comes to luncheon. Otherwise all quiet on the Western Front.

Affectionately yours, O. W. H.

Devon Lodge, 4.IX.29

My dear Justice: This hot and noisy London is not pleasant after the cool and tranquillity of the country. But it has its compensations. I went this morning to an exhibition of a dozen Vermeers my delight in which I do not know how to express. The exquisite serenity and precision of line are perfect. I was literally overwhelmed with them — especially “The Little Street” and the “Music Lesson.” I wish you could have been there to share them with me. Then I have had a jolly dinner with Tomlinson the writer. He is just back from Italy where he stayed in Rapallo. *Inter alios* he encountered some of our best sellers, like Michael Arlen, who were trying to convince themselves that they were great artists. He said that their poses in public were beyond words. Arlen always explained, on the very slightest provocation, the pains of composition. He could only write in one room; sometimes he had taken a ‘plane from Paris to London to put in a paragraph which had moved him. Another gent. explained that he could only write his poems while an electric piano played Beethoven sonatas. There was also an Italian painter who could only paint in a mauve room. Tomlinson said he never felt so normal in his life. And Arlen told him that what his (T’s) work lacked was the power to put his hand on “the great pulse of London.” He explained how at night he slept with open windows near Piccadilly as the taxi-cabs made him feel nearer to London’s soul. You can see that people like you and I who write in ordinary rooms on ordinary paper are really much too commonplace ever to have anything real to say. Then I went to the wedding of a friend who married the daughter of Forbes-Robertson, the actor.¹ I never saw the theatre *in excelsis* as here. If you are a famous actress your technique consists (a) in kissing your rival profusely and calling her darling at every other word. (b) explaining that her dress or hat is “quite too marvellous.” (c) regretting that you did not see her in her last show but everyone said she was “quite too marvellous.” (d) What a pity that X (“I suppose he’s quite our first critic”) hated the play; “did you choose it yourself, darling”? I must add, so that you can the better appreciate my innocence, that the lady next to whom I sat in the Church seemed to me about 28–30; but such is the modern cosmetic art that I discovered she was in fact just on sixty. I had one amusing moment at the reception with Bernard Shaw. He was explaining to an adoring audience that Ibsen did what had never been done before by exploding the folly of obsolete pseudo-idealism. He asked me to agree and I explained that I couldn’t. He then explained to the audience (suitably impressed) that I had the typical imperceptiveness of the academic.

¹ On August 31 Mr. James Hamilton and Miss Jean Forbes-Robertson, daughter of Sir Johnston Forbes-Robertson, were married at St. Giles-in-the-Fields.

So I thought the time for veneration had passed and told the worshippers that even Shaw might have been expected to know Cervantes. But as I think most of them did not, probably the victory remained with him.

I am so glad you like Allen's book, which I thought really admirable. I am enclosing the notice I wrote of it in the *English Historical Review* in the thought that it may interest for a moment.² Your "Saki" I do not know except by repute. I have been in very different literary company — the classical international lawyers of the 18th century. Sir, I beg to state with my hand on my heart that I cannot for the life of me see why Vattel or Wolff ever got a reputation. I think there is real mental power in Byrneschöck; but the other two seem to me to have been just like what Nicholas Murray Butler is today — pompous, oily, and snobbish. Have you ever been driven to give them first-hand attention? I am not, God knows, proposing it; but I would like confirmation of my guess that they are nonsense in court dress. I have read a good book by E. Cannan — *A Review of Economic Theory* — a combination of historic analysis and argument you would like. Also a book by Jacques Rueff published by the new Johns Hopkins Law School called *From the Physical to the Social Sciences*. I can't say I was greatly impressed. It doesn't seem to me novel to say that the logic of the natural sciences is the only satisfactory method of analysis. It does seem to me futile to expect from the material of the social science principles like the laws say of physics; and even a science of politics like a Euclidean geometry would not tell me the "oughts" of desire. I mean that physics doesn't need a system of values; the social sciences do; and the attempt to build up analogies simply breaks down after the business of statement has been completed. But I must be wrong for I note as I write this that the book is enormously praised in the current *New Republic*.³ Of other things I read a *very* good general book on Aristotle by W. D. Ross — an expert in these matters, and a pleasant novel somewhat in the Dickens manner by J. B. Priestley called *The Good Companions* — a little too hearty perhaps, but still not to be underestimated.

Book-buying, alas, has not yet begun; there is nothing in the shops. When I get back from Manchester I hope very much to run over for two or three days to Paris and have a real hunt — a thing I have not done since I was in Geneva in March.

I was delighted to read that you have come through August so well; and I pay humble tribute to Mrs. B. *et al.* who have helped to make things pleasant. If only I could retire and come and live in Washington near you and write.

My love to you deeply.

Ever affectionately yours, H. J. L.

² 44 *English Historical Review* 469 (July 1929).

³ Reviewed by C. J. Keyser, 60 *New Republic* 23 (Aug. 21, 1929).

Beverly Farms, September 15, 1929

My dear Laski: Such a nice letter from you on your return to London. You amuse me about the best sellers and their ways. I used to call them the unknown illustrious — people that the upper educated class never had heard of but that sold a million copies. I once devoted a little time to reading some of their books to try to discover the secret. My conclusion was: no style — no knowledge of life — no picture of character — but something doing all the time. And they were right, except to the sophisticated. I, the reader, am the hero and don't need to have him described — &c. &c. In my old age I somewhat sympathize with the barbarian and am amazed and bored by the hitches and troubles necessary to spin the story to a book's length. Your book *From the Physical to the Social Sciences* reminds me of early days at the dentists when I was recovering from chloroform, and found the secret of the universe in certain sounds, such as I got from striking saws of different sizes in my father's workshop. I said to the dentist, "I have effected the transition from the physical to the metaphysical." I have trouble in reading who the painter was who pleased you — Veronese? Your remark about the "oughts" and system of values in political science leaves me rather cold. If, as I think, the values are simply generalizations emotionally expressed, the generalizations are matters for the same science as other observations of fact. If, as I sometimes suspect, you believe in some transcendental sanction, I don't. Of course different people, and especially different races, differ in their values — but those differences are matters of fact, and I have no respect for them except my general respect for what exists. Man is an idealizing animal — and expresses his ideals (values) in the conventions of his time. I have very little respect for the conventions in themselves, but respect and generally try to observe those of my own environment as the transitory expression of an eternal fact. I readily believe what you say about Vattel — and shall feel exonerated from the duty of reading him as I was by Morris Cohen from Thomas Aquinas. In your excellent notice of Allen you enhance my feeling that I ought to read Suarez — given me by Canon Sheehan and pronounced by him an original thinker (but I didn't quite trust his judgment). Well — the last two weeks of vacation promise to be busy. I have received our last bag of *certioraris* — and the Law School wanted me to be painted by Hopkinson — full length — to hang by the side of Marshall in a new reading room. I am much flattered and the work begins tomorrow — and there goes the leisure I had promised myself for the end. I have just received *The Tragic Era* by Claude G. Bowers — an account of Johnson and the times after Lincoln's death. The writer is a bitter partisan (democrat) but he tells the story in an absorb-

ingly interesting way. I believe he is going to write a life of Beveridge — safe to be good reading. He seems to know all the dodges to keep the reader intent. I shall go elsewhere for philosophic views — and for general statements of fact that I believed. But the burning problem now is shall I attempt to stand long enough to be painted standing — and what will he do about my hair, which I have not had cut for a good while — and there are many bothering doubts on varied themes which I omit. The morning paper has a picture of Wu described [as] one of the foremost interpreters of oriental law to this world. So he is getting on.

Affectionately yours, O. W. Holmes

Devon Lodge, 16.IX.29

My dear Justice: If I calculate aright, this should just arrive in time to greet you on your arrival in Washington. It brings you my warm greeting for the new term. Please keep fit and well until I come in March. I count on that enormously.

What have I not done since I wrote last? A week in Manchester with my people, I made a speech there, settled a strike and read some ten or twelve bad novels. I was enormously interested by the psychology of the business men I met. Their intuitive grasp of their job was amazing. They seemed to feel the market with an extra sense that anyone in my line simply doesn't possess. But ask them to explain their operations and they flounder about quite helplessly with no power whatever of ordered thought. I looked through all the Manchester bookshops in vain. Theology, sets of the mighty dead in full morocco, and the lesser pornography. But I dug out a tiny pamphlet of Buckle's which moved me greatly. You will remember Mill's discussion of the *Pooley* case in the essay on Liberty. Seeming [*sic*] Buckle reviewed this in *Fraser* and Coleridge's son replied in a mean letter. Buckle replied in this little pamphlet and I must say that I think it is a really first-rate piece of polemical writing.¹ It led me back to his *History* and I was amazed again at his learning, without feeling that he is quite first-rate. J. M. Robertson tells me that I am wrong and that Buckle really was a supreme innovator. But I feel that he merely states eloquently a body of great platitudes none of which he can be said to have seen afresh. I like his anti-clericalism and his zeal for science; I like the body of incidental knowledge he accumulates; but I can't see

¹ In 1857 Sir John Coleridge (1790–1876), with his son John Duke Coleridge, later Lord Chief Justice, acting as counsel for the prosecution, had sentenced Thomas Pooley to fifteen months' imprisonment for publishing a blasphemous libel. Buckle's first comment on the case was in *Fraser's* for May 1859 and is reprinted in 1 *The Miscellaneous Works of Henry Thomas Buckle* (Grant, ed., 1885) 75, 115 *et seq.*

greatness as a historian in the sense that Gibbon was great or, in the line he chose himself, the German scholar Burckhardt.² Have you any views?

I came back on Saturday to a jolly dinner with Nevinson who sails for Washington with MacDonald. He will only be there a week, but he is proposing to call on you one afternoon, so I am sure of direct news of you. He had a woman to dinner . . . an eminent pianist whom I wish you could have seen. Like all public performers who are women she is a professional languisher. She feels that life is a series of halts on the verge of elopements and I wish you could have watched her set her cap at me, S. K. Ratcliffe, *et al.* who were the guests. She started superbly with me by saying that when she read my *Communism* she felt I loved music from the movement of my sentences — pretty good. She told Nevinson that she is always reminded by him of a Bach fugue — really better. Shaw, she said, was like a Scarlatti prelude — Frida was nearly overwhelmed; I was really very good and told her that I felt musicians the natural judges of political science. She took it like a bird. Then on Sunday Frida had a party here for some continental members of the International Sexual Reform Congress which has been meeting here. I can't put on paper all the things that were said. A heavy German gentleman asked me who were the leading perverts among Labour politicians. A French lady asked me how long I had been married; I told her and she enquired whether I did not find sexual intercourse monotonous. I, poor thing, crept quietly away. Frida, poor child, who had given this party at B. Russell's request had even more difficult questions to answer. A Russian gent. told her that their auras corresponded and that they must meet alone. An American lady hoped that Diana was being brought up to appreciate the philosophy of nudity. Two hours of this were enough to make us glad that the next meeting in London will be five years hence. And then this morning I was called upon by a Chinese gentleman who wished me to leave on Monday next for Pekin. He was founding a school of wisdom and I was to be one of the elect. I explained that I could not and he waved it aside. I must feel a call. He was going to have the twelve sages of the West, all in one house, and the life of China would be different. I explained again that family commitments in England made my departure impossible. He waved this aside as quite irrelevant. My wife could visit me; and in any case I was needed by China. He left smiling and happy. But I could not tell whether he was just mad or one of those people to whom the practical details of life are quite irrelevant.

Of other things there is not much to tell. My little book nears its end; and I hope to have it really done before term begins three weeks from

² Jacob Christopher Burckhardt (1818–1897); Swiss cultural historian; author of *Die Kultur der Renaissance in Italien* (1860) and *Die Zeit Konstantins des Grossen* (1852).

now. Tomorrow I go off to Cardiff for a few days to arbitrate in a big industrial dispute and I suppose I shall have nothing but wage-statistics for breakfast, lunch, and dinner. But led by you I have laid in two volumes of "Saki" for nourishment there, together with a complete Jane Austen in one volume.

My love to you. Keep really well and go on dissenting.

Ever affectionately yours, H. J. L.

Devon Lodge, 28.IX.29

My dear Justice: A delightful letter from you. And I have tried to reply to it in the best way by giving my friend Lord Arnold¹ an introduction to you. He is accompanying the P.M. on the great tour and I think you will find him an interesting example of the new type who has joined the Labour Party. He was a great friend of Haldane's and is a thoroughly good fellow.

I have been very busy since I wrote last. Three grim days in Cardiff arbitrating a strike took all the patience I have and was a very difficult and delicate business. The two sides were so unpleasant to each other that at times I was in despair, and the effect of being unable to have any private talk is a curious sense of isolation. However, at the end they disagreed and accepted my independent decision which I previously had worked out in great detail. I came back on the train with three of the union's leaders and had extraordinarily interesting talk. One of them was a passionate lover of Dickens and one responsive answer set him off until he sounded almost like a lover with his mistress. Another was a local J.P. and was so impressed by his own unfitness for the work that he had actually got himself called to the Bar in order to know what the law was about and not to feel that he was merely the voice of his clerk. The third was an amateur astronomer and to hear the reverence with which he mentioned people like Leverrier and Adams² was really a pleasure. I had three very revealing hours for they convinced me that the number of men who can be made to feel that leisure should be creative is much larger than our educational technique recognises. All these men had gone to work at ten and eleven and all of them had taken up intellectual pursuits out of a sense of want through unsatisfied curiosity. I think it was significant that none of them possessed a motor car, and that when they

¹ Sidney Arnold (1878-1945), first Baron Arnold, had joined the Labour Party in 1922; in 1938 he resigned from the Party because of disagreement with foreign policy.

² Urbain Jean Joseph Leverrier (1811-1877) and John Couch Adams (1819-1892) almost simultaneously but quite independently determined the existence of an unknown planet, Neptune.

spoke of certain colleagues who did not share their tastes they said, "Oh yes! Of course X devotes his evenings to his car" in a way that suggested definite incompatibility between the one and the other.

In the way of reading one or two things are worth mention. I have worked my way through the official life of Disraeli, which has just appeared in a remarkable cheap edition.³ It is a curious experience. He is false, artificial, the actor to his fingertips, and yet you cannot help a real affection for him. The ability to manage people is quite extraordinary; and though I can't rate him among the ultimately significant Englishmen, he certainly suggests that the parliamentary system enables great talents to tell in an unrivalled way. I read, also, the two volumes of unpublished letters he wrote in his old age to the ladies Chesterfield and Bradford. They are a pathetic document. The old man was lonely and these two aristocratic butterflies seem so to have won his heart that his whole life centres about them. To him they are the reason for existence, and, to them, he is clearly a flattering incident in the world of dancing, racing, hunting, and week-end country house-parties which make up "society." Then in a very different realm I read Kelsen's *Hauptprobleme der Staatslehre* which I believe to be the most remarkable juristic work I have read since I first encountered Gierke fifteen years ago. Probably I overestimate it somewhat; but it certainly thrilled me as the map of a country I had not otherwise seen surveyed with anything like the same precision and delicacy. I reread *Phineas Finn* also with the old delight and the old sense that the murder trial is the very best criminal trial in all fiction and Mr. Chaffinbrass quite unquestionably the most brilliant picture of the old-time English lawyer that has been put in a printed book.

We have been out a little. We went to see the new Shaw play — *The Apple-Cart* — and I thought it both mediocre and vulgar. It is the argument of Bolingbroke's Patriot King against democracy and no better than when it was first made. The dialogue, which critics like St. John Ervine, have praised seemed to me the smart back-chat you get from vaudeville comedians in a music hall; and it was, to my mind, full of the strangest lapses of taste. We went also to a farewell dinner of the P.M., heard some secrets, and watched with enormous interest the effort of under-secretaries to establish their future claim to cabinet position. MacDonald is charming in this kind of atmosphere. The vanity of the *prima donna* disappears, and he becomes a simple and interesting human being. I had also to lunch Sir John Shea,⁴ a fine soldier who commands our troops on the North West frontier of India. He told great tales of the Afghan tribes there and the

³ W. F. Monypenny and G. E. Buckle, *The Life of Benjamin Disraeli, Earl of Beaconsfield* (2 vol. ed., 1929).

⁴ General Sir John Shea (1869–) from 1928 until his retirement in 1932 held the Eastern Command in India.

queer combination of courage, honour, and treachery which shape their lives. I gave, too, a dinner to a young colleague who has got himself engaged, and watched with acute pleasure his happy confidence that he was the centre of the universe. MacDonald, by the way, told a good story of a visitor to Frogmore, the royal mausoleum, who saw the tomb of the Prince Consort. "Who was he?" "The husband of Queen Victoria." "Yes, but what did he do?" "He was the father of King Edward, the Duke of Connaught, the Princess Royal, the Empress Frederick, etc." "Yes, but I mean what did he do in the daytime?" . . .

My love to you. Here we have a perfect Indian summer and I have not a want to complain of except the desire for a thousand pounds for a year's freedom from teaching. In other words life is at least an ode.

Ever affectionately yours, H. J. L.

Beverly Farms, September 29, 1929, Sunday

My dear Laski: You miscalculated a little, for your letter that expected to meet me in Washington was forwarded to me here and reached me yesterday. But tomorrow morning I do leave for Boston — and hope to be in Washington Thursday morning. I believe that I have told you that my expected last two weeks of idleness have been cut up by standing for a full length portrait by Hopkinson for the Harvard Law School. Hopkinson has a gift for catching a likeness and for vividness I think — and I am quite proud of his results. As to Buckle — it must be over 60 years ago that I read him — and I only have referred to him once, when writing about Montesquieu, to make sure of his having dwelt on climate. My general impression is like yours. I think on reopening him I found him abler than I had anticipated but I hardly had regarded him as a pathfinder although he more or less indicated the direction of future paths. Your musical dame and sexual reformers give me great pleasure — why am I denied these glimpses of a higher aether? To have a woman asking about your *medias res* is more amusing than ten *certioraris*. Your German historian Burckhardt I know not — ought I to before I die? As a result of the portrait I have read nothing since rereading *Anna Karenina* except part of Swift's *Diary to Stella* — not so good reading as Pepys and even perhaps a trifle squalid, but still interesting. I shall take it with me. Books like that and Pepys and Walpole's letters fill a niche in life very pleasantly.

I think that my wife's death, although I cannot regret it, because life would have meant suffering and pain, keeps the thought of my own before me, so that I want to add; if I am alive, when I say that I go to Washington Wednesday night. It makes me think of the time when all life shall have perished from the earth, and tests the strength of the only

comfort I know — the belief that the I know not what, if it swamps all our human ultimates, does so because it is in some unimaginable way greater than they, which are only a part of it. But I also think that our demands for satisfaction are intensified by exaggeration of the belief in the unity of ourselves and a failure to see how they change in content and contour — as is natural if consciousness is only an electric illumination of cosmic currents when they make white light. Lord, Lord, I have said all this so many times before that I ought to be ashamed. But the thought must needs repeat itself daily and so the expression may be pardoned if not more than once a month. Also every litany has its repetitions.

I envy you your acquaintance with Birrell. I was just referring to a page in *Obiter Dicta* and found it hard to lay the enchanting volume down. Happy the man who can take books leisurely, like a soaking rain, and not inquire too curiously for the amount of fertilizer they contain. It takes robust and staying power to get adequate pleasure out of even the greatness of the past. It takes other and richer gifts to find all the good there is in the second rate. But I fear that I drool — farewell.

Affectionately yours, O. W. H.

Devon Lodge, 12.X.29

My dear Justice: I ought to have written to you last week; but I have been so driven and even pestered by students that I have just tumbled into bed o' nights. I have classes so large that they are almost nightmares, and graduates from half Europe have chosen to come and do research with me to say nothing of Indians and Chinese and Japs. It is only now that I have got things straight and can have a word with you.

I am intensely anxious to hear how you liked my political leader and also Arnold.¹ What they thought of you a cable from J.R.M. has told me; and I will not repeat it because it would make you vain. But at least I have won his gratitude by telling him what was the best sight in America today. I wish I could have been with you; and I dislike having to wait another fortnight before I can hear his tale of how you are and what you said.

Your dear letter from Beverly — written just before you left for Washington — moved me much. Please think all the time that though she is gone, there are one or two like myself to whom the fact of having you is a great part of the joy of life; I know that the day fourteen [*sic*] years ago when Felix took me to Beverly Farms is one of the three biggest events in

¹ MacDonald and his staff had arrived in the United States on October 4. His conversations with President Hoover concerning naval disarmament took place from October 6 to 10, ending in satisfactory statements of accord. MacDonald did not in fact see Holmes; *infra*, p. 1192.

my life. And I literally count the days until March when I can talk things over with you again.

I have, as term necessitates, been hard at it indeed. Mostly it has been the grim business of political philosophy. I've been doing the Spanish theological jurists of the 16th century for my seminar — Soto, Suarez, Victoria *et al.* revelling in them and making an anthology of passages for the lads to read — great fellows they are, a little long-winded but subtle and noble-hearted. I put Suarez first, and I think that between Aquinas and Descartes he could claim to have about the best mind of all the people we know in these matters. Then, too, I have been slowly working through the classics of international law for my Yale lectures in April. Sir, may I say to you that Puffendorf is third-rate, Wolff fourth-rate, Thomasius seventh-rate, and Vattel elegant in a tenth-rate way. Why ever they became classics God only knows. And for amusement one or two things I must comment on. (a) Hawthorne's *The Blithedale Romance* — an exquisite piece of gossamer. I don't know why I had never come across it before; its style is pure magic. (b) J. M. Robertson, *A Short History of Morals* — simply admirable, with a brilliantly devastating analysis of the Christian ethic and some very good attacks on Plato. If this tempts you I wish you would say the word and I will send it. For my virtues I have been elected an Honorary Member of the Rationalist Press Association, with Arnold Bennett and Wells, and this gives me the right to purchase their publications at 50% off the published price. But I don't want to load you up with books you don't want to read. (c) I read with enormous pleasure *Mme. de Staël* by Lady Blennerhassett² — I gather one of Lord Acton's learned ladies — a first-rate job and a thoroughly interesting picture of a great epoch. I wish, by the way, that I could understand why literature went dead in France between 1780 and Chateaubriand; and I rather think the same is true in Russia since about 1910. With all her vanity and affection, she was a great woman. It's a good job that her mother didn't marry Gibbon after all. (e) I have read for review the official life of Halsbury³ — a brave old second-rater, a kind of fellow who would, I think, have got on very well with Andrew Jackson. He also writes of Cairns with simply bated breath; and in the new Disraeli letters, which I have just read, Dizzy, who certainly thought most men fools, just wilts in admiration before Cairns. I wish I could penetrate the secret.

* Charlotte de Leyden (1843–1917), German-born historian of French letters; her Irish husband, Sir Richard Blennerhassett, was a friend of Lord Acton's. Before her marriage to Necker, Madame de Staël's mother, Susanne Curchod, had been engaged to Gibbon, a commitment which Gibbon *père* could not approve. The son dutifully accepted the father's decision: "I sighed as a lover, I obeyed as a son."

³ Laski's review of A. Wilson Fox, *The Earl of Halsbury* (1929), has not been identified.

The decisions don't show it; neither do the printed speeches in Hansard. I spoke of this to Birrell the other day and he said that the judgment of the Bar was that only Blackburn, Jessel and Bowen touched the heights Cairns did. There must be a faculty of legal appreciation which I simply lack altogether; for I cannot see it at all.

Of other things, there isn't very much to tell. I went to a book-auction and found the thing I wanted soaring to fantastic heights as I got it; stayed a half hour and heard a post-card from Bernard Shaw bid up to thirty pounds! and an autographed first edition of Galsworthy's *Man of Devon* [sic] ⁴ was sold for £150. I felt this was madness and reflected upon the curiosities of taste. Ten years from now I don't believe any first edition of Galsworthy will be worth that many pence. I went, also, to the opening of an exhibition of modern art in which a friend had a picture. Of the seventy pieces, I could relate eleven to their titles; one I began to understand when the artist arrived in great indignation to point out that it was hung upside down; and one was painted so that it looked identical, (a cubist thing) from whatever angle it was regarded. Yet people bought the things like hot cakes at thirty to fifty pounds apiece. I assume that I cannot understand these matters.

People have drifted in a good deal lately. A friend of Brandeis; Felix's younger sister — a nice girl full of proper reverence for him; a weird Englishman who is Prime Minister to the Rajah of Pahala and has acquired there habits of oriental magnificence; a delectable Chinaman with whom I have to speak German which he seems to understand now and again; but whenever I mention a book his head nods with instant comprehension; and a Sinhalese who arrived with an interpreter, a wife, and a little Sinhalese princeling and wanted me to put on paper in two pages the secret of good government; I fear I sent him away sad. But you will see that my days do not lack colour.

My love to you as always.

Ever affectionately yours, H. J. L.

Washington, D. C., October 16, 1929

My dear Laski: It seems a thousand years since I last wrote to you — but I have been immersed in the manifold tasks that beset one on arrival here at the beginning of the Term. I think I told you of the portrait I stood for before leaving — but not of my flying visit to the new Langdell Hall ¹ while in Boston. I was tremendously impressed by it. I will not describe it for you will see it — but I doubt if there is anywhere so noble a recipient for teachers and students of the law. . . .

⁴ Presumably *The Man of Property* (1906).

¹ At the Harvard Law School.

I didn't see the Prime Minister. The Ambassador wrote to me and I made an appointment for him to call but at the last minute he had to go to the White House and so I missed him. I was sorry, especially because my wife had a great fancy for him because of his book, what she read about him, his looks, &c. However, I had a good call from the Ambassador (a dear good fellow) and your friend Lord Arnold who was very pleasant and afterwards sent me a charming book: *Home* by Alan Mulgan, a New Zealander — poetically rapturous about England. Of course one smiles a little at his emotional responses more or less mistaking themselves for critical estimates, but so far as I have read I am charmed. But I have had no chance to read more than a few inches of print other than legal records and arguments. I wish I had had your letter before I saw Lord Arnold. It came just after he had left.

I am interested by your labor leaders on the train — your reflections on leisure — and their reference to the others who devote their evenings to their cars. I imagine that here at least there would be a hundred after their cars to one after a book — a larger proportion than that. Your Kelsen's *Hauptprobleme* worries me — I fear that I ought to read it, and German does not come very easy — supposing the work to be accessible, as it should be.

The last two days have been spoiled by the dentist, but I am glad that I went to him. I told him I felt as I did when, after the night in which I thought I was dying, the hospital man said that I should recover and everything snapped back into life again. I was rather in despair about my teeth — but though one has perished under the cutting and scraping — the rest seem to be coming out better than I feared, and I shall bet on them against my body — *i.e.* I don't think that I shall die toothless — but there are two or three days more when I must give an hour to him.

Brandeis, who seems in good shape, reminded me of a case argued last term in which he said I should have to write a dissent. I looked at it and sure enough it is one rather specially in my line on which I had and have decided views — one of those cases in which it seems to one that most judges show limited subtlety.² There are cases from time to time that strike bottom notions and bottom notions often are very hazily held. I won't go into it now, as I have only had time to jot down a few sentences at odd moments. I am keeping well and it looks now as I should be alive when you come over — and if I am, no one will welcome you more heartily than I shall.

I went over to Arlington a second time on Sunday (it is Wednesday now). The stone is up for my wife, and being in a military place had to justify itself by my name — so I see what the passerby will read — Oliver Wendell Holmes, Captain & Bvt. Colonel — 20th Mass. Vol. Inf'ty. Civil

² The case has not been identified.

War — March, 1841— . I wish you could see it for I think it is in as romantic a spot as almost anywhere on the grounds. It looks as if a deer might trip out and stop — but I don't want to exaggerate. At least the place might have been much worse. It is time for me to stop. I feel an affectionate thrill at the thought that perhaps I shall see you again.

Affectionately yours, O. W. H.

Washington, D. C., October 23, 1929

October 21 was Ball's Bluff 68 years ago.

My dear Laski: Your letter came this evening — it is solitaire time in 10 minutes but I must write a line. You put heart into me by what you say — for though I can't quite believe such things I believe it enough to get happiness from it.

As to Robertson's *Short History of Morals* I wonder that you ask me. It is the kind of book that I am keen to read — though I should approach one written by an apostle or propagandist with suspicion. Of course I should like it.

I looked at your Kelsen's *Hauptprobleme der Staatslehre* — but it was too solid a lump of raw German for me — and it looked to me as if he was somewhat like the German comic papers that take you by both ears and shove your nose into a joke. I didn't read half a page but it smelt as if he brought the German touch to impalpables.

I revere your attack on Suarez *et al.* Canon Sheehan gave me Suarez but I never have done more than peek into him. You have infinitely more patience than I in reading books that tell you nothing for the sake of the thoughts that you will contribute. Yet I have done a fair share. If you make a volume of elegant extracts I will read it if still alive and in possession of my wits. There's lots more to say but I must go downstairs to my cards. I have read nothing (bar records of cases) except *The Amazing Chance* (Patricia Wentworth) which kept me interested though it reminded me of Tom Appleton's remark about the statue of Horace Mann in front of the State House — done by a sculptress — "Man by Woman".

I am beginning to look forward to March for you.

Affectionately yours, O. W. H.

Devon Lodge, 3.XI.29

My dear Justice: I am ashamed of myself for three weeks' silence. But I have hardly had a moment to spare even for Frida. In addition to my ordinary work, the government set me to arbitrate a dispute over allowances between the Admiralty and its officers abroad and I was hard at it every other day for a fortnight. Then I had to lecture to the Fabian So-

ciety with Lord Sankey in the chair; and to examine for a fellowship at Cambridge. These things eat away time.

My most important news has a good side and a bad one. The Lord Chancellor has put me on to a committee to enquire into the development of administrative law in England and to suggest safeguards.¹ It is a great committee, and a great subject; *inter alios*, Leslie Scott is a member and Holdsworth, the legal historian. We haven't yet met to decide procedure, but I have fears that it may prevent me from coming over next spring, as I can't very well absent myself in the middle. I tried to get out of it, but Sankey was so insistent that I couldn't but give way. Of course, if it shows signs of lasting over a year I shall certainly think myself entitled to three months' leave of absence. But, otherwise, my duty, alas, is obviously here. It is a terrible shame as I had built enormously on that American visit.

I am sorry indeed that you didn't see Ramsay after all; I think you would have liked him. I had dinner with him last night and heard his impressions. He was very taken with Hoover and Stimson, but *inter Americanos*, Brandeis struck him more than anyone. I wish you would whisper to Esmé Howard when you see him that the P.M. is perfectly lyrical about the admirable arrangements H. made from start to finish.

One or two amusing tid-bits I must tell you. On Friday, Frida and I went to lunch with the Shaws. G.B.S. asked me for ten minutes' private talk and I wondered what *could* be coming. What he wanted was that I should suggest to the P.M. the desirability of making Lord Astor² our ambassador to Washington. I explained that it was impossible to send a native-born American as ambassador to his own country . . . But to my surprise Shaw's heart was set on it and he argued about it like a child pleading for a piece of sugar-cake. Then I must recount the visit of the Chinese gentleman who came to ask me to accept an invitation to lecture in China. I explained I could not; he then, with references to Confucius, Lao Tse, and Bertrand Russell, showed me that China was my spiritual home; and when I persisted, ended by asking me if I would, at least, give him a testimonial. I explained that I could not and he left saying that his invariable experience with Western scholars was disappointment. Another gentleman came from France and was writing a book on Burke. He had a list of questions most of which were quite unanswerable. One was where there was inedited material about Burke. I told him of what

¹ The Committee, under the chairmanship of the Earl of Donoughmore, was to consider the powers exercised by Ministers by way of delegated legislation and judicial or quasi-judicial decision. See *Report of the Committee on Ministers' Powers* (1932); *Command Papers* #4060.

² Waldorf Astor (1879-1952), second Viscount; lover of horses, Astor was the American-born husband of Lady Astor, Nancy Langhorne of Virginia (1879-).

I knew. He asked me for an introduction to the man who had certain letters — a country squire in Sussex. I explained that I didn't know the Squire and so could do nothing. He left, and four days later I had an angry letter from the squire to ask why I had, a stranger, given X the advice to visit him. I wrote back detailing the facts. The squire looked me up and drew a quite marvellous picture of an angry Frenchman shaking his fist at an English red-faced hunting turkey-cock and calling upon him in the name of civilisation to let him have the letters. Refusal of the squire. The Frenchman gets choleric and denounces him. He gets so excited that the squire's wife comes in to see if her husband is being murdered. She calms the man down and he suggests as a compromise that he be invited to stay in the house until he has copied the letters. A polite refusal. "Sir" says the Frenchman as a parting shot, "I shall ask Professor Laski to denounce you in every journal in England." Then, kissing the lady's hand, he departs. Can't you imagine the magnificent scene?

In the way of reading, I have not done much outside the sphere of work. But I have enjoyed greatly re-reading Mark Pattison's *Life of Casaubon* and Diderot's *Life* by Scherer — both of them, I think, tip-top in their way. Diderot, I think, is quite the finest type of 18th century man of letters. There is nothing of the monkey-tricks you get in Voltaire, and not a trace of Rousseau's pathological egotism (you notice that I am obedient and put in the *t*). He is always human and honest, and full of suggestiveness. I read, too, with delight Ehrlich's *Sociologie des Rechts* for the first time in ten years: in a way I think it is really incomparable. And I read Charlotte Brontë's *Shirley*, at Diana's instigation, and found it wholly delightful. It is a very pleasant experience to have a daughter who begins to insist that you should know the things she is reading as an intellectual obligation from parent to child!

I have bought very little — the catalogues as yet are pretty meagre and what I have sent for has usually been sold. But I wish you could see the Medici print of Vermeer's "Little House at Delft" which Frida gave me — as exquisite a thing in the way of reproductions I have seen; and she has had it framed in a copy of the original so that it is like a jewel on my wall. I was pleased too by a letter from the Prof. Allen who wrote that *Sixteenth Century Political Thought* saying that my review had heartened him to go on at 70 with his book on the next age; and a Prof. Wright of Columbia whose book on *Rousseau* I had reviewed wrote to me to say that my praise meant more to him than anything he had received. These things tickle my vanity as a scholar and make me feel that I may not be wasting all my time. Also I have just had an order from my publisher to prepare a fourth edition of my *Grammar of Politics*, which is not bad for so vast a book in five years.

I must not forget to tell you that I received £10 from Harcourt for your *Collected Papers*. It has just paid the fees of a young man in an evening school; and after a month bless me if he doesn't win its scholarship to London University. Isn't that fine?

Our love to you in heaps. No day passes without our thinking and talking of you.

Yours ever affectionately, H. J. L.

Washington, D. C., November 22, 1929

My dear Laski: May this catch the mail, an inadequate answer to two, as usual, unusual letters from you, against which I can set only a hasty scrawl and the volume of dissenting opinions.¹ Yet I have been nearer to leisure than I often am — and yet again leisure is busier than business — endless bores by mail — people not bores but who took time calling. I haven't improved my mind as I should — unless by writing a short dissent from an opinion by McReynolds in which I am alone — Brandeis and Stone concurring in result of majority on grounds that I think not fairly open.² I began Whitehead's *Process and Reality*, but apart from the fact that I believe the line of thought would be one that I don't much value if I understood it, I find W's vocabulary and mode of expression so difficult that I doubt if I understand anything I have read. Yet he (W.) is an extraordinary man — talks and can write with admirable clearness. I guess it is carrying over mathematical habits into philosophical writing. It is a great humbug to say that mathematics teaches accuracy or clearness of thought. That is secured for you without effort because a is always a and $x = x$ — without any chance for an undistributed middle. So I have interrupted one whom by faith I believe to be a great and good man to descend to easier levels — like Huneker's *Promenades of an Impressionist* — which gives me pleasure after the ineffability of the moderns. Also I was pleased by a side slash at T. S. Eliot (poet and critic — did you ever hear of him — I am told regarded by youth as its prophet) in a periodical *Life and Letters*³ which has good reading in it, and is sent to me by Richard Hale. I have given up all subscriptions to periodicals and take no newspaper — except by prescription, the *New Republic*, by curiosity, *Art* — a modernist American quarto publication, oh yes and for merit, *The Geographical Magazine* — though I haven't ever done much more than look at the pictures — but I am not quite sure that that hasn't stopped.

I was interrupted by a luncheon and a discourse to my secretary⁴ on

¹ *The Dissenting Opinions of Mr. Justice Holmes* (Lief, ed., 1929).

² *Safe Deposit and Trust Co. v. Virginia*, 280 U.S. 83 (Nov. 25, 1929).

³ F. L. Lucas, "Criticism," 3 *Life and Letters* 433 (November 1929).

⁴ Alger Hiss, who had graduated from the Harvard Law School in June 1929, was Holmes's law clerk in 1929–30.

our wish for local color and the old notion that poetical experience should always be in general terms — the notion of France and England a hundred and fifty years ago — illustrated by a passage from Dr. Johnson's *Life of Dryden* where he says that every reader would wish every phrase of Dryden speaking of Oakum Tarpaulins &c. apropos of the English ships after a battle, struck out — or Legouv   in his *Memoirs* (60 years) when he says that when his father in a play made someone answer a question as to the hour: "*minuit*" — they feared a riot in the theatre — (*i.e.* he should have talked tall) contrasting this with Brownell's "Bay Fight" in which he uses oakum and boiling pitch with thrilling effect. But probably I have said the same things to you.⁵ It is an old lecture.

I think in these days often of the grace of an old man sitting in unproductive elegance awaiting death — but I can't do it. I should feel that I was wasting time. I am glad that I can't wrap myself in self-satisfaction as I have seen some do — but still people do and say pretty things to the old man — and they are not all damned fools. It eases the passage. My love to you all.

Aff. yrs., O. W. H.

Devon Lodge, 10.XI.29

My dear Justice: A busy week and a quiet week-end spent in working off the accumulation of book reviews I ought to have done long ago. I have been to lunch to Sankey, settled a strike, dined and speechified to the students of 15 universities, and written two articles. I feel extraordinarily virtuous, especially as I have persuaded the P.M. to make a purely judicial appointment in place of Carson who has just resigned from the Lords.¹ I am pleased about that, as I am very anxious that this government should consider only legal eminence in making judges, and once the tradition begins, it is difficult to depart from it. I was staggered by the flood of letters the P.M. had from applicants, some even humiliating in their tone of supplication. However, Sankey backed me like a Trojan and I think we have got our way.

In the way of general news, I haven't much to tell. I went on Thursday to the Commons to hear the great debate on India:² one good moment when Lloyd-George referred to the S. of State as this "pocket Moses," whereupon the latter got up and said with extraordinary effect "At any

⁵ See, *supra*, p. 785.

¹ On November 11 Mr. Justice Russell, a Lord Justice of Appeal, was named Lord of Appeal in Ordinary. Shortly thereafter he became Baron Russell of Killowen.

² The Debate concerned the possibility of conferring Dominion status on India, a proposal which the Viceroy, Lord Irwin, had recently supported. Mr. Wedgwood Benn was Secretary of State for India at this time.

rate I never worshipped the golden calf." I thought L-G would faint. After the intervention he simply petered out and had nothing to say. I went also on a curious errand with Graham Wallas — to ask the Home Secretary to bring in a Bill for the repeal of the Blasphemy Laws. We could not get a Bill out of him on the plea of time, but at least we got a pledge that while he was in office he would not allow any proceedings under the Act to be taken. If, by the way, a book by one Nokes, *The History of the Law of Blasphemy* should come your way, I think it would really interest you for the curious light it casts on the history of opinion. It also shows how little you can trust a judge who is arrogant in these matters. In 1908 Phillimore, J. who was a churchman tried a working man named Boulter for some remarks about the Virgin Mary. B. was found guilty and the judge offered to bind him over if he would become a Christian.³ B. accepted and went to church faithfully for three months. Then, seemingly, the virgin proved too strong for him and he was again guilty of verbal rape. So Phillimore gave him six months under the old sentence and expressed his surprise that the man had been guilty of insincerity. What queer people these Christians are. Phillimore would have applauded a man who refused to turn Mahomedan to save his skin; and with all his sophistication he cannot see the offence of which he is guilty is really identical. *Quantula Sapientia!* I quoted this case to the Home Secretary, and after our talk was over his legal adviser asked me if I did not think that Phillimore had really done the decent thing on the first occasion.

I have read one or two things this week worth noting. One, a quite charming book on Burke and the reaction against the 18th century by one Cobban. He makes the good point that Burke was the first thinker to see the significance of the nation; though, quite wrongly, I think, he blames Locke and Hume for lacking that insight; it being quite clear that what awakened Burke was the partition of Poland and the French wars. Then a book evidently loudly trumpeted among you called *The Tragic Era* by Claude Bowers. I thought it good reading, in the same way that Drury Lane Melodrama is good melodrama; but I did not think he said anything new or really explained the swiftness of the reconciliation between North and South which is after all a very remarkable thing. I read also an admirable book on the sovereignty of the British dominions by A. B. Keith — much the sanest pronouncement on the empire and its legal problems I have read. That is probably because he agrees with some of my pet theories thereon e.g. that there is no right of secession in law, and that in a matter of foreign policy since the Dominion must consult the crown through the S. of S. for the Dominions the King will clearly act on the latter's advice and the predominance of England in the empire is there-

³ *Rex v. Boulter*, 72 J.P. 188 (1908).

fore pivotal. But all this is small beer, though pleasant, and I must not bore you with it. I read, too, a treatise by a Michigan professor named Dickinson on *The Equality of States in International Law* which struck me as good though too long and abominably over-annotated.

I have also bought some pretty things. First a nice folio of Suarez *De Legibus*, which has given me very great pleasure. Then some 18th century French tracts on toleration, called forth by a defence of S. Bartholomew by an Abbé Caveyrac⁴ — one of them extraordinarily modern, predicting (1776) great discoveries in biblical criticism and urging that the Church will only stultify itself by trying to preserve theories of the *N.T.* which criticism will overthrow. Also a copy of Jourdain's *History of the University of Paris*, a quite fascinating book full of curious learning and, to my delight, a wonderful pendant to Hauréau's "scholasticism"; but even this man throws no light on my pet mystery of how Marsilius of Padua suddenly emerges from nowhere in 1312 as Rector of the University of Paris. And I have a lovely copy bound in three volumes of Savigny's *Roman Law in the Middle Ages* which pleases me specially because it belonged to Jean Brissaud for whose work I have an admiration little less than I have for Pollock and Maitland.

At the moment Frida and Diana are down by the sea for a week-end of breezes. So today I got in for tea all the colleagues who bore Frida by a too-great devotion to *ὄτι* and the enclitic. In a way it was really very funny. X cared only for the Tudor period and Y only for private international law; Z was a statistician. Each was completely bored by the others and it ended by my describing Sean O'Casey's new play⁵ to them all, each terrified lest I should stop and one of the three get hold of the conversation. And I really suspect that each tried to outstay the others to lament that they were terribly narrow specialists!

My love to you. I begin sittings on administrative law on Tuesday.

Ever affectionately yours, H. J. L.

Devon Lodge, 17.XI.29

My dear Justice: Let me begin with my bad news first. I shall not be able to get to America in the Spring. My committee on delegated legislation is to begin taking evidence in February and will be hard at it until August, so of course I have to stay here and work at it. It is terrible luck; for I had counted more than I can say on seeing you and Felix and having real talk. It's also a serious financial loss to me, for I had reckoned on making about four hundred pounds which would have come very gratefully. But

⁴ The Abbé Jean Novi de Caveyrac (1713–1782) wrote several works defending Louis XIV for his revocation of the Edict of Nantes.

⁵ *The Silver Tassie* had opened at the Apollo Theatre in October.

I saw the Lord Chancellor and the P.M. and they both insisted that I must stay as it is a good deal my special theme and they seem to build enormously on a good report from the committee. So there you are! I have written a pathetic apology to Yale, but I don't see that I have any alternative.

Feliciora canamus. I have been about a good deal this week. A jolly dinner at the Webbs to meet General Smuts. He is a fine fellow in most things, quick, vivid, shrewd. On the negro question he is very bad, talks like a Southerner of the 'fifties and seems not at all to realize that segregation is an impossible policy. But I should say that he is extraordinarily wide-minded on other things, possibly also a little "slim"; he struck me as curiously anxious to please. Also a very interesting lunch at the Admiralty with the First Lord.¹ Sailors are really interesting. They are, as I meet them, all simple-minded, religious, semi-literate, and amazingly unadaptable. They are also as charming as they make 'em, but they never see beyond their noses. No doubt they are technically superb; but they are not statesmen in any sense; and the commonplaces of politics are tremendous novelties to them. Then a jolly party at Sankey's where I met Arnold and heard at first-hand all about you. He pleased me by saying that Howard (the Ambassador) told the P.M.'s party that 1720 I Street had been his greatest pleasure in Washington. I think you ought to know that. I went also to a lunch at Bernard Shaw's, chiefly amusing because G.B.S. was exactly like a third-rate realtor at a Rotary Club engaged in boosting real estate. I thought his antics quite incredibly vulgar; but the rest of them seemed to think it a wonderful performance so that I am probably excessively sensitive. It was amusing also to see how irritated he was when anyone else had the lead in talk; he just forced his way back, like a *prima donna* who frowns when the tenor holds the centre of the stage. Of course he says remarkable things; but he does not know how to stop talking, and he gets off his "prefaces" in talk — a bad thing on principle I think. J. M. Barrie was there — like a little cock-sparrow and about as intelligent. He lives in a world of completely arrested mental development and lives by the human passion for fairies and syrup; but why he should be taken seriously God only knows. He is just a public schoolboy whose ideal is Sherlock Holmes and Philip Sidney and D'Artagnan; and I imagine that he is just at the mental stage of feeling how the nation depends for its salvation on resuming prayers at its mother's knee. . . .

In the way of reading, I have one or two special things to report. (I) Ernest Hemingway, *A Farewell to Arms*, one of the most remarkable war

¹ Albert V. Alexander (1885–), later Viscount Alexander of Hillsborough; First Lord of the Admiralty, 1929–1931; Minister of Defence, 1947–1950.

books I have read. You will remember you read (and liked) *Fiesta*² — this has a stark brilliance which is really on the very threshold of greatness. (II) *What the Negro Thinks*, by R. R. Moton — the head of Tuskegee. This is a simple and beautiful book, quite devoid of bitterness, over-optimistic I should guess in its estimate of the changing Southern temper, but very moving. I was very struck by the fact that he emphasises his sense that the Supreme Court is the one American institution in which negroes have confidence as just (III) Verdross, *Die Einheit des Völkerrecht* — a really remarkable piece of work — legal scholasticism if you will, much as Morris Cohen is scholastic, but quite brilliantly done. (IV) a charming novel called *Christopher [and] Columbus* by "Elizabeth" — it isn't new; it is sentimental; but it really is simple and effective and charming.

I haven't bought very much, but I am waiting with anxiety for a Suarez *De Legibus* which I saw in a catalogue in Italy and still hope for. I bought a very interesting book by one Vanderpol, a Belgian, called *La doctrine scholastique de la guerre* which is tremendously suggestive about all those XVI century Spaniards — an amazing body of people whose superiority in power of analysis to Grotius is incontestable. And then, out of piety for a great name, I bought for seven shillings the published writings of Wyclif in 20 volumes. I am lecturing on him this term and so I read, as a moral duty, the *Dialogues*. It is very able, but harsh and crabbed and intolerably scholastic. Yet the sense of power and modernity that one gets are undeniably impressive. I think it could be shown easily and truly that Wyclif was definitely utilitarian, and that he took much the same view of the state as Hobbes did. But he must have been a hopeless person to live with — a Philistine of Philistines. Did you ever read the *Life* of him by H. B. Workman — a very good book.

We are all as fit as fiddles and there is no lack of work. I expect we shall steal away to Antwerp after Xmas for a few days. But, otherwise, I shall be grimly here trying to stop bureaucracy in England. I do wish I could have somehow slipped over to you. Perhaps Yale will be kind and let me come a little later.

Our love to you — and forgive me.

Ever affectionately yours, H. J. L.

Devon Lodge, 24.XI.29

My dear Justice: You have warmed my heart with that volume of dissents; for though it is not very well done, and ought not to be dissents alone, short of having the Supreme Court Reports (an unattainable ideal on a professional salary) it has texts like *Abrams* and *Lochner* and *Northern*

* The English edition of *The Sun Also Rises* (1926) was entitled *Fiesta*.

Securities which I have long been eager to have. So I am really grateful and pleased. Thank you.

A swift week has gone by full of work. The most interesting thing in it, I think, was a jolly dinner with the Army Staff College. (I had given them a lecture on martial law.) They were a charming set of fellows, and the talk was very good. The most interesting things were their affirmation (I) that Haldane was quite unquestionably the greatest secretary of war this country has ever had and (II) that a trade union official at the War Office was invaluable because he understood, as no Tory ever did, the *esprit de corps* of the Army. Then I went to Grand Night at Lincoln's Inn, a little pompous and far too much food, but one priceless story which was new to me and may be new to you. It appears that Phillimore, J.¹ was so ardent a Christian that he refused to sit in divorce cases on the ground that divorce was wrong by Divine appointment. This was reported to Bigham, J.² who growled "what would Phillimore say if a Unitarian Judge refused to sit in Admiralty cases on the ground that he could not conscientiously associate with Elder Brethren of Trinity House?"³ Then I had a sitting of my Committee on Delegated Legislation. Hard work; but quite thrilling. I'm impressed by the fact that the barristers on the Commission are ten times as quick as the solicitors in taking points. Whether that is the result of court-work I do not know; but the solicitor seems to waken to the point about seven minutes after it has been made and buried while the barrister is on it like a terrier on a rat. Another thing of sheer beauty is the way in which the civil servants on the committee play together as a perfect team. It is like watching a pair at lawn tennis each of whom knows exactly what the other is likely to do. Last night we had Judge Thacher of the New York District Court⁴ to dinner — a charming fellow with all the right views (I mean my views) on American legal matters. He told me some charming things about Cardozo who is evidently quite *hors concours* among state judges — the best, I

¹ Sir Walter Phillimore, Bart. (1845–1929), first Baron Phillimore; ecclesiastical and admiralty lawyer whose surprising advancement to the Queen's Bench in 1897 was followed in 1913 by three years on the Court of Appeal, and by distinguished service in the House of Lords and on the Privy Council.

² John Charles Bigham (1840–1929), first Viscount Mersey, was named judge of the Queen's Bench at the same time as Phillimore; in 1908 he became President of the Probate, Divorce and Admiralty Division of the High Court, where his distinguished work was done in Admiralty matters.

³ The Elder Brethren of Trinity House are the Governors of the "Guild, Fraternity, or Brotherhood of the Most Glorious and Undividable Trinity of Stillement," an ancient corporation charged with licensing pilots and maintaining buoys. The Brethren sit as assessors in admiralty.

⁴ Thomas Day Thacher (1881–1950), judge of the U. S. District Court, Southern District of New York, 1925–1930; Solicitor General of the United States, 1930–1933; judge of the New York Court of Appeal, 1943–1948.

should guess, since you were on the Massachusetts Court. I went also to a lunch at the House of Commons to meet the Vice-President of the *Conseil d'État* in France.⁵ I wish you could have seen him. He was exactly like a turkey-cock, and, quite logically, when he spoke he goggled. I had to interpret his speech and while I was doing so he sat back with closed eyes as if in an attitude of prayer. But in sheer beauty of style and diction I must say I have rarely heard a better speech. There was a necessary character about each word that he used that left one in helpless admiration. In that, I think, the French are unsurpassed. Then I had a long afternoon with Sir Harrison Moore, the Australian judge,⁶ who struck me as both pleasant and able. He came to consult me about the Imperial Conference now sitting and whether a statute on the Colonial Laws Validity Act was more desirable or no than a declaration or constitutional convention. I told him to plump for a statute on the ground that convention is always twenty per cent misunderstanding and that this twenty per cent is always the really important part in a crisis. He told me some weird and wonderful things about Australian Universities which must be on about the level of Montana and Nebraska.

In the way of reading one or two things worthy of note. A very fine war book by Robert Graves, *An End to All That*⁷ with a brilliant satirical picture of the English public school. Certainly the longer I live the more hostile I become to it; and the last defence of it by the Headmaster of Harrow who urges that it knows so well how to bring religion into the lives of the best class of English youth.⁸ Then another novel by Ernest Hemingway — *Fiesta* — a study of the rich American semi-intellectual abroad. It is cruel satire, but it bears the stamp of a certain stark truth about it, and its power is quite unmistakable. And the life of Rathenau by his friend, Harry Kessler — an amazingly interesting record of an amazingly interesting man. I knew Rathenau quite well for about six months before his assassination, and it is extraordinary how well Kessler brings the sense one had of power and spirituality combined. Lastly I read with absorption F. L. Paxson — *A History of the American Frontier*. It is badly written; but I must say it is simply thrilling, an epic in the sense that the *Odyssey* is an epic. If you can forgive its aesthetic sins, which are many, pray send for it to the Library of Congress. I won't say that it gave me a new vision of America; but it made me put in light and shade in many parts of American habits and institutions which I had hitherto seen in quite uniform colours. A really good book.

⁵ Théodore Tissier (1866-).

⁶ See, *supra*, p. 1053. Sir William played an important part in the drafting of the Statute of Westminster, which resulted from the deliberations of the Imperial Conference.

⁷ *Good-Bye to All That; an Autobiography* (1929).

⁸ Cyril Norwood, *The English Tradition of Education* (1929).

I have only bought one thing — a copy of Bédé's very rare answer to Bellarmin on the power of Kings in 1611.⁹ It is a thing of real beauty — first an exquisite piece of printing, and next adorably bound in a 17th century morocco binding with the most delicate gold tracery in the form of interwoven *fleurs-de-lys*. And all this enchantment for one pound. Glory be!

I still chafe resentfully at being deprived of America — the more so as I have had a mass of invitations this week — Columbia, Cornell, California, which would have given me for very little effort about four hundred pounds. Not to see one's best friends for the sake of duty — is there anything more bitter in the second rank of loss?

My love to you. It is good to have you alive.

Always yours affectionately, Harold J. Laski

Washington, D. C., November 30, 1929

My dear Laski: It is a disappointment; but an earlier letter than this (17.XI.) had warned me that probably you would not come. I believe that I have remarked to you before that at my age 6 months is like an inch on a man's nose. But I will not bid you an eternal adieu, but simply turn my thoughts in another direction. I still may see you again, somehow, after all.

Work has begun again — I mean work-work, not leisure-work, which sometimes is the harder of the two. The first week, just finished, was mitigated by Thanksgiving and the fact that four cases running turned on a single point.¹ I am afraid I haven't made the most of my time — but I have read one book that I recommend: Geoffrey Scott — *The Architecture of Humanism* — a short, well-written exposition of various fallacies on the theme and a defense of the Roman as against the Gothic product. Some years ago Spengler on the downfall of the Western world cracked up the Baroque, as a transition to music — and Scott does the same thing on solid architectural reasoning. It is a pleasure to my ungenerous soul to see Ruskin's pontifical dogmatizing kicked in the stomach. I once believed all that Ruskin said and like a little revenge before I die. Apropos of your Smuts I told you last summer that his effort to philosophize seemed to me rather empty.

Your letter praising Hemingway came just two days after his book had come to me from Owen Wister — an aftermath of a Sunday spent

⁹ Presumably Jean Bédé de la Gornadière, *Le droit des roys contre le cardinal Bellarmin et autres Jesuites* (1611).

¹ This may refer to the issues involved in *Safe Deposit and Trust Co. v. Virginia*, *supra*, p. 1196, and *Farmers Loan and Trust Co. v. Minnesota*, 280 U.S. 204 (1930).

here — (to our mutual pleasure — I hope). I doubt if I shall go as far as you do — but Hemingway must be a clever writer for he interests me when I can't see any reason for it (in *The Sun Also Rises*). Hemingway, I believe, is something of an athlete and Wister writes to me has been hurt lately in a bull fight — which seems good. I am told that he is one of the heroes of the young — as T. S. Eliot has been. I don't yet see the need to get very excited about him — but it is well to keep one's mind open to the fashions of the day. Every fashion is beautiful while it is the fashion. My assignment has come from the Chief Justice and the next words I put on paper must be the beginning of an opinion — I hope to finish it on the Sabbath. My love to you.

Affectionately yours, O. W. Holmes

Devon Lodge, 9.XII.29

My dear Justice: I sent off to you today Robertson, *History of Free-thought* as a Xmas present. I hope it will arrive in decent condition. I know you will enjoy it, for a good vigorous rationalist treatise is a rarity in these days of the new irrationalism.

Your letter was a delight; and I was particularly gratified by your remarks on Whitehead's new book. It was sent me for review and after going through it once I returned it. I can't say exactly that I could not make head or tail of it. But I thought the price of admission excessive, and certain parts, like the treatment of God, seemed to me as near intellectual dishonesty as be damned. For Whitehead doesn't mean by God anything that any theologian has ever meant, with the result that he quite unjustifiably leaves an impression of a harmony between science and religion which is only reached by making words, *à la* Humpty-Dumpty, mean whatever he wants them to mean just by paying them more. And the style seems to me excessively difficult. No! I prefer ignorance if that is the cost of entrance to the philosophic fair. I wonder whether even such an admirer of his as Felix would really justify this book.

I have been pretty busy this last fortnight. A speech to the dining-club of the Civil servants on "A certain condescension in civil servants"; a dinner with Snowden; a lunch with Webbs; and a dinner at the Political Economy Club. Snowden was very interesting. He has a purely Victorian mind. The simple virtues, economy, chastity, etc. are absolutes for him and I don't believe his mind has ever wandered outside that realm. A certain absence of reading apart, talk with him is very like what it must have been with Mr. Gladstone. He spoke, for instance, of "the moral obliquity of George Eliot," and was insistent that the best social type is the contented workman who saves a few shillings a week. The

Political Economy Club was also interesting. They discussed the coal crisis, and they were exactly like a body of people reading Darwin for the first time and being shocked at the abandonment of special creation. It was striking to observe how very much better the economists were than the business men. The latter were clearly unaware that they acted on assumptions, and as each of these was brought to light in discussion, its proponent promptly repudiated it with horror. What struck me very forcibly was that the business man does not seek any conscious body of principles. He clearly has a "flair" built on unconscious experience; and the attempt to make those "flairs" into a reasoned argument, (which may result in their destruction) simply makes him irritated. At the School one feature was amusing. Our guests were my two colleagues who have become ministers. The younger was so proud of it that he began by saying "how difficult it is to return to the smallness of academic life after participating in maintaining the peace of Europe" and proceeded quite solemnly in that vein for twenty minutes. I had to reply to a toast of the school and said that we professors, of course, knew that we were worms in the presence of eagles, but we felt that, occasionally, excrescences upon the social fabric were perceived by the humble worm which were unseen by the eagle's soaring glance; that it was even possible that in the long run people like Spinoza and Hegel, with no pretence to statesmanship, might be remembered as not unworthy of a place in the bead-roll of fame. Another amusing thing I have been doing was a debate on the radio with a biologist on the respective power of heredity and environment in relation to social policy. It was thoroughly enjoyable, especially as the biologist was an extreme Nordic and enabled me to ask him whether he really thought the race which had produced Dante and Petrarch and Machiavelli was intellectually inferior to the English; and when he argued that judicial ability ran in families and had little or nothing to do with exposure to a similar environment, I really felt that the Lord had delivered him into my hands.

In the way of reading, there are one or two things worth noting. First of all *Our Present Philosophy of Life* by M. Belgion — a quite brilliant attack on Shaw, Russell, Freud, and André Gide, done with a verve and a gaiety that I think you would thoroughly enjoy. Then an excellent French book *Standards* by Dubreuil,¹ a study of the effect of American mass-production on the psychology of a sensitive French craftsman who had spent a year in Detroit. It is a masterly thing, and it suggests once more the truth of my old hobby that if we want to avoid social cleavage we must discover either (a) means of happiness in work or (b) means of making the leisure-period creative. Otherwise the personality of the worker is seriously frustrated and the result is an individual disharmony

¹ Published in an English translation under the title *Robots or Men?* (1930).

which will sooner or later find social expression. Third, Dibelius' *England*, a translation from the German, a most interesting book, full of unexpected and illuminating *aperçus*.² I believe it is shortly to be published in America, and I hope greatly that it will come your way. Finally, let me note a really beautiful little book by Lascelles Abercrombie, the poet, called *Romanticism*, without exception, I think, the most subtle analysis of the romantic element in poetry I have ever read. It thrilled me, and if I can find another copy (it is out of print) be sure that it shall very certainly wend its way to you.

I have also bought some pretty things. A nice copy of the Abbé Coyer's *Bagatelles morales* (1746) which conceals under that harmless title a most excoriating attack on the moral and political standards of the *ancien régime*. Two answers to Mariana's *De Institutione Regis* — one a beautiful copy in red morocco bound by the author for presentation to Richer, the Syndic of the Sorbonne. And an *Apologie pour Jésus Christ* (1756) a brilliantly ironical defence of toleration in answer to the general attitude of the Church *circa* 1750, done with a charming nastiness that reminds one of Voltaire.

This is the last week of term. I have a really nice prospect ahead. A month's vacation, for part of which we shall go to Antwerp, then a term with less than an hour's work a day at the School, and the Sankey Committee from February onwards. So, even though America has become a dream, I shall have leisure to think and write for the first time since September. But I hate giving up America. There were you and Felix to see; I should have come back with £800. in my pocket; and I should have been refreshed and beyond the reach of my political friends. Eheu!

Our love to you as always.

Ever affectionately yours, H. J. L.

Washington, D. C., December 18, 1929

My dear Laski: This will not arrive in time to repeat my wishes for a Merry Christmas but will I hope do so for a happy New Year. Yours marked 9.XII.29 came today and mentions themes for speech. Evidently you understand more than I do what Whitehead means to convey. I simply don't know what the words as he uses them mean. However, I think I am beginning to establish relations with him and I mean to read to the end, at rather rare and interrupted moments. If as I take it he conceives possible and probable another cosmic epoch with different ultimates, that falls in with my ways of thinking (as to the possibility at least). But I have got very little articulate from him so far, beyond a belief that perhaps it is important. Felix wrote that he gave it up.

It is interesting to think of your dining at the Political Economy Club. I

² Reviewed by Laski, 6 *Sat. Rev. of Lit.* 795 (March 8, 1930).

went there with J. S. Mill and there were present Bramwell,¹ Cairnes,² Fitzjames Stephen, the blind Postmaster General (who wrote on political economy or his wife did), Fawcett³ — I couldn't think of his name — and curiously enough the talk then also was on Coal — whether the financial policy of England should be governed by the prospective exhaustion of coal in H years as predicted by Jevons (not, I believe, the political economist of that name).⁴ I ventured a whisper to my neighbor that 90 years was too far ahead to take into account for such purposes — so many things might happen. I remember that Stephen went to sleep at the table.

As to the thinking of business men I used a phrase that has been a good deal repeated — the inarticulate major premise.⁵

I have encountered men like your colleague who having had a little to do with public affairs found it hard to take up the smaller interests of the law, etc. I want to say to them that everything in the universe is as interesting as anything else if you are able to see it as a coherent part of a possibly coherent whole — and if you don't see the universal in your particular, you are a manual laborer and it doesn't matter.

On your (a) and (b) for workmen if we would avoid social cleavage I feel some sympathy and some doubt — I am not well informed — but I think more men live an essentially animal life than you seem to think — and I know no *a priori* reason or necessity for their not doing so.

My secretary has been reading to me Tom Perry's letter's⁶ — he was a member of a dining club with H. Adams, Howells, W. James, and various others and a very amusing talker but you realize the slightness

¹ George William Wilshire Bramwell (1808–1892), Baron Bramwell; judge of the Court of Exchequer, 1856–1876, and of the Court of Appeal, 1876–1881.

² John Elliot Cairnes (1823–1875); economist and effective advocate of the Northern cause in the Civil War, he was an intimate friend of Mill and Fawcett and author of *Some Leading Principles of Political Economy* (1874).

³ Henry Fawcett (1833–1884); blinded in a shooting accident in 1858, he became Professor of Political Economy at Cambridge in 1863, a member of Parliament from 1865 to 1874, and Postmaster General in Gladstone's government in 1880.

⁴ It seems likely that Holmes's recollection was wrong; in 1865, a year before Holmes attended the dinner of the Political Economy Club, William Stanley Jevons (1835–1882), economist, published his book *The Coal Question: An Enquiry concerning the Progress of the Nation and the Probable Exhaustion of Our Coal Mines*.

⁵ "The Theory of Legal Interpretation," *Collected Legal Papers*, 203, 209: "But although practical men generally prefer to leave their major premises inarticulate, yet even for practical purposes theory generally turns out the most important thing in the end."

⁶ *Selections from the Letters of Thomas Sergeant Perry* (E. A. Robinson, ed., 1929).

of his intellectual frame as he talks on — to John Morse⁷ — Moorfield Storey⁸ — W. J., S. Reinach⁹ *et al.* — at the same time very pleasant for an idle hour. You mentioned sometime back, *Farewell to Arms* — by Hemingway. I couldn't quite use the superlatives that you and some others have used about it — but it has some thrilling power. The author interested me by the wonder that he raised in my mind, especially by another book, *The Sun Also Rises* — as to why and how he interests me — extremely ordinary people and extremely ordinary talk (noted with great intensity, I admit) and yet I read on. He certainly is something of a writer — whether a very great one I still doubt — as I, with due and sincere modesty, doubt about the great lights among the modernist painters — hastening to add that I have seen but little of Cézanne — their goddest God. There is one of his things here that an expounding admirer told me he had come to see more atmosphere and everything else in than in any other painting. I know how dwelling with a great master is necessary to get hold of him — and so bow my head — but I haven't seen it yet — and the dwelling may distort. Perhaps the admiration has a touch of what Tom Perry talks about — the hatred of the 20th century for the 19th just as the 19th despised the 18th. The reactions amuse and interest me. I think I told you how pleased I was to read Scott — *Architecture* — cracking up Palladian and the Baroque and putting a spear into the side of Ruskin.

I have just today circulated a dissent from an opinion by McReynolds — on the taxing power of the States under the 14th Amendment.¹⁰ McReynolds has the popular side — but to my mind it is another case of treating the XIV Amendment as prohibiting what 5 out of 9 old gentlemen don't think about right. This is a sequel to one that I fired off at our last day of sitting before the present recess.

I think that perhaps I am more scrupulous than you in answering bores that bother me with letters, or more likely, am slower in my work. I think that I feel the constant gnawing of time — my secretary and servants treat me as if I were porcelain and should chip if anything touched me — whereas I inwardly believe that I can tumble (as I did last summer) without breaking. I could say more on the theme but it isn't polite and I may have said it before. The clock strikes 9. I must descend to solitaire — as an old couple sitting near us at the Hague said as they left an evening concert in the wood, "Goodnight pleasant people" — and I add, dear friend.

Affectionately yours, O. W. H.

⁷ John Torrey Morse, Jr., *supra*, p. 972.

⁸ *Supra*, p. 758.

⁹ Solomon Reinach (1858–1932); French archaeologist; author of *Orpheus* (1909) and *Apollo* (1904).

¹⁰ *Farmer's Loan and Trust Co. v. Minnesota*, *supra*, p. 1204.

A theatre manager in Boston said to Salvini:¹¹ "I say old man — do you want to be billed as Mons. or Sig." — pronounce as written. Do you prefer to be addressed as *Prof.* H.J.L.?

Devon Lodge, 23.XII.29

My dear Justice: You will forgive the intermission of a week. Quite suddenly ten days ago the P.M. produced a huge document that Webb had circulated to the Cabinet and asked me to produce a critical analysis of it. The document turned out to be a proposed constitution for E. Africa in general and Kenya in particular; he gave me until this morning to get it done and if ever I have worked, I have done this last ten days. However I have enjoyed it; for I have slaughtered Webb out of his own mouth and produced an alternative which is, I think, fairly respectable. My one complaint is that Webb had 7 months for his job, and I only had ten days for mine; he, moreover, will defend himself in person in the Cabinet and I, poor soul, must depend on others to answer him back. Still, it was great fun and I do not think the Lord will hold my draft up against me at the judgment day. I observe that what Webb got into 74 folio pages I got effortlessly into eleven.¹

You can understand that, this apart, I have not done much. We had a good dinner at Sankey's, where Russell, the new Lord of Appeal (son of R. of Killowen) was present. I liked him greatly, a thorough, down-right kind of person, with just a faint trace of Irish tongue. Then a lunch with Arthur Henderson, the Foreign Secretary, and much talk of the Naval Conference.² Evidently your people and ours are in pretty general agreement; but the French, as at Washington nine years ago, are proving very obstructive and Mussolini is terrified of any proposal which may touch his prestige. Henderson told me a glorious story of a priest who came to him in the Lobby of the House and said that the B.V.M. had appeared to him in a dream to tell him (the priest) that he should see Henderson and order him to resign. Henderson said he would do so at once if the priest would bring him the orders in writing as he thought such a document ought to be in the archives of the Foreign Office. He told me also of a diplomat who asked permission to wear the Order of the White Elephant from Siam and asked in what proximity it should stand to the Bath. The F.O. official replied that questions of that nature should be addressed to the Keeper of the Zoological Gardens.

¹¹ Tommaso Salvini (1829–1915), Italian tragedian.

¹ The government's plan for the administration of East Africa was published in a White Paper in June 1930; *Command Papers* #3573, 3574 (1930).

² The Four-Power Naval Conference was scheduled to convene in London in January.

Since I wrote last, as you will imagine, I have read but little. I ambled through André Gide's new book on Montaigne which I thought good, but not so good as one had a right to expect, though the mere beauty of the prose is beyond praise. I read, too, a pamphlet of T. S. Eliot on Dante which had points but rather read like an indication that no one had ever appreciated Dante before Eliot kindly gave his attention to Dante's reputation. And I read for the first time Shaw's *Perfect Wagnerite* which I thought quite fiendishly clever and calculated to make romantic Wagnerians burst with bad temper.

I have also bought some pretty things. The most interesting, I think, is a collection in three volumes of contemporary criticisms of Montesquieu, one or two really able, the rest the bad temper of the clerics and the excessive royalists. Another is a book by the Abbé Coyer (fl. 1750) on a plan for national education which has wisdom of a high type and is, I think, not improbably the main origin of Condorcet's famous report to the National Assembly and a third is a charming trifle by Ginguené (1789) on the influence of Rabelais on the French Revolution, a plea that R's temper is the kind of way in which Frenchmen can best hope to get their quarrels settled. I had also sent to me a weird book on *Nature in the Age of Louis XIV* which, so far as I can make out, is an argument that because La Fontaine and others mention gardens and flowers and rocks the classical period must be regarded as definitely romantic. And a business man of the type who, alas, insists on philosophising sends me 400 pages, beautifully printed to say that the important social forces are organisation, stimulation, modification, reputation, radiation, idealisation, and a lot of other words like this. I believe he thinks it dreadfully important for he encloses a registered envelope to acknowledge its receipt and a questionnaire about it which the hapless recipient is supposed to answer. And in the index I observe "Lester Ward — errors of," "Darwin (Charles — no longer highly regarded)," "Garcke (Emile) (the author)³ — importance of the discoveries of." Do you have this type of amiable idiot in America?

We are off on Saturday for ten days in Belgium. I am looking forward hugely to it, as we hope to steal two days in the Hague and Amsterdam and see the pictures there. I have fallen so completely in love with Vermeer that I feel as though I would go almost anywhere to look at them. Frida, too, is captivated and as I cannot enjoy things unless she shares in them, I am full of excitement about it.

Private: I had got so far when the telephone went and I was summoned to see Sankey at his house. I find that I have got to write a memorandum

³ Presumably Emile Garcke, coauthor of *Factory Accounts, Their Principles and Practice* (1902).

on the place of an economic general staff in the structure of government. As I believe there is no place for it, and have so written at length in my *Grammar of Politics*, and as S. tells me that the P.M. thinks it one of the great ideas of all time, it looks as though I have a difficult task ahead. However, I have stipulated that it is not to interfere with Xmas, and my holiday, and perhaps in the excitement of the Naval Conference I can be supremely critical without causing undue pain. I do wish politicians were not so surrounded with a chorus of adulation. Any fool could show that MacDonald's idea is administratively unworkable; but he invited a dozen economists and business men to discuss it, and as he indicated that he thought there was something in it, they seem to have persuaded him that it was to politics what relativity is to physics. And I, poor soul, have to provide the cold douche. It's a hard life.

I had a golden account of you from Nevinston who dropped in to tea this afternoon; and he gave me good news of Felix. It only made me resent the more this postponement of my visit. But Yale writes very charmingly that it may want me next year.

Our love to you in a quite special way for 1930.

Ever affectionately yours, H. J. L.

Devon Lodge, 28.XII.29

My dear Justice: We are off tonight to Antwerp; but I must send a word of thanks for that card¹ It is my favourite Méryon of all Méryons, one that I should have been born thirty years earlier in order to purchase. Now, as I expect you know, it has a supreme collector's value.

Xmas passed very happily here, and it was at least sufficiently peaceful to enable me to get a good deal of quiet work done, book reviews, brief articles, and so on, that had hung on my hands for weeks and called out in reproof. Also I have been working at a public lecture I have to give next March on Babeuf, a thrilling subject, for there is the real origin of Bolshevik strategy. It's an incredible thing to watch the daily movement of a man quite incapable of first-rate thought, who is yet a real pioneer in action. Of course he was hopelessly wrong in all his theoretic ideas, Rousseau and gunpowder for the most part. But he had learned the tactical errors of 1789-1794 with something like the insight of genius and he had seen, what no one else saw until Blanqui and Marx, the supreme importance of the idea of a dictatorial law-giver in *The Social Contract*. I can, I think, make a pretty piece about him. At any rate you shall see one day.

Of other things but little that it is worth while to record. A young French professor of law came to see me who pleased me by talking with

¹ The card referred to is missing.

enthusiasm of you and Morris Cohen and Felix's articles on the injunction,² and by being severely critical of Pound. He was a pupil of Brissaud and talked of him much as I should talk of Maitland. I was pleased, too, with a young Cambridge man who was at work on Elizabethan political thought and had done what I think the best book I have ever seen on Erastus.³ He was so excited by his theme that he could not keep still and marched up and down my study like a caged tiger. He was full of the muddle caused by the Protestant theory of natural law, and when I showed him your paper thereon, he gave a whoop of joy. I found that he read Spanish and hope to grab him for a book on my pet hobby — the Jesuit jurists of the 16th century who seem to me, especially Suarez, about the biggest product of that time. And I had an amusing Xmas call from the Prime Minister who came, I think, to tell me that he was a very great man, that all his critics misjudge the quality of his thinking, and that nothing interests him save the public good. I suggested that such knowledge must give him immense satisfaction and felt that he was rather like the Indian sage who spent his declining years in the solemn contemplation of his own navel.

Of reading apart from Babeuf not very much. The *Autobiography* of President Coolidge which was sent me for review, but I thought it better to return it lest my affection for America led me to say things the law of libel does not permit; but to you I can perhaps whisper that the more I think of Coolidge the more I like Hoover. I read, too, for, I think, the seventh time, the *Life and Letters of Darwin*, perfectly monumental and quite the noblest record of a man's life that I know in print. His inexhaustible patience and his modesty are really beyond words; and his attitude to Wallace,⁴ compared to the Newton-Leibniz row (the only comparable thing) makes one humble in his presence. Above all the reverence for fact is amazing, and the power to concentrate, and the pride in other men's achievement. I wish I could feel that the abridgement in one volume were always read in the schools in the last year. It would do infinitely more good than most attempts at the improvement of youth.

Well — here for the moment I must end. Once again my love, as always, and a New Year as bright and peaceful as ever I can wish you.

Ever affectionately yours, H. J. L.

² Frankfurter and Greene, "Labor Injunctions and Federal Legislation," 42 *Harv. L. Rev.* 766 (April 1929); reprinted as concluding chapter of Frankfurter and Greene, *The Labor Injunction* (1930).

³ Not identified.

⁴ Alfred Russel Wallace (1823–1913), British naturalist whose coincidental suggestion of the principle of natural selection was based on independent study in Brazil and the East Indies.

VII

1930-1932

Devon Lodge, 18.1.30

My dear Justice: I ought to have written to you earlier. But when I got back from the Continent a week ago, I was caught up in a whirl of work from which I have only just emerged. I think I told you that I had at the zero hour to do a draft constitution for Kenya. I came back to find that Webb (who is Secretary for the Colonies) was bitterly hostile, that Sankey was all for my draft, and that there was a grand fight in the Cabinet. I had to prepare a vast memorandum to answer Webb's points, and, what with the inevitable labours of a new term, it has taken all my time. You will forgive.

We had a great ten days abroad. First we came back with some etchings that would thrill you. One of boats at Nieuport; they lie at anchor in the harbour, great massive things which seem straining at their cables to get away. Oleffe, the artist, whom we had not seen for six years, had it waiting for us as a gift when we called upon him. . . . We went to the Hague, Amsterdam, and Brussels, and I was, at the end, almost drunk with Dutch and Flemish pictures. I like them beyond all others. They are so warm and intimate and tender. The Vermeers especially seem to me the top of artistic creation — exquisite simplicity and yet the experience of all the ages made manifest. It was curious to come back and see the Italian exhibition.¹ I liked enormously the primitives, and one or two Moronis. But taken as a whole, alongside the Flemish, it seemed to me cloying as art, too sweet, and too consciously elegant. Great things of course; but they were lost in and dwarfed by the myriads of second-rate things. The Dutch have them beaten to a frazzle. Perhaps I think thus because I like art that clutches at your innards by its power to show that simple and obvious beauties, the average bit of daily experience, lies at the centre of ultimate aesthetic principle, that rightly seen, the peasant in the field, the maid in a room, the merchant at his desk, are part of the infinite glory of whatever God there be.

Of other things, too, we drank deep. Talk with painters into the small hours; music; and bookhunting. Could one ask more? I add that I hereby declare, being in full possession of my faculties, that the opera is an impossible form of art. It is stilted, it cannot create the necessary illusions (Brunhilde at 50 and sixteen stonel) and it perishes of its own absurdity. The artists are great fun. Rabelaisian talk, but coming back always to big themes, and caring deeply about ultimate principle. Old Ensor, the biggest fellow in Belgium today (do look at the book on him by Grégoire Leroy, I expect in the Library of Congress) made one point to me that I had not seen before. The Dutch, in the arts, have done everything supremely except sculpture. There they have not even produced the second-rate. Yet, as today, they are head and shoulders above normality

¹ In December an exhibition of Italian paintings had opened at Burlington House.

in architecture. Why? I must add that you would have been intoxicated with me by Walter Vaes' collection of old ship models — a Spanish schooner of 1610, perfect in condition, a Salem frigate of 1770, an English seventy-two of 1692, with a beauty of line and colouring quite beyond words. It was a feast for the eyes, and I came home as from an enchanted land. And ten whole days free of politics, in which they were really reduced to the perspective they ought to have, was refreshing beyond words.

I got back on Thursday week and spent two days with my people in Manchester. I met Alexander the philosopher there and was delighted to find him wrestling grimly with Whitehead's new book. He says he is at the fifth reading and that light begins dimly to dawn for him. I have tried it twice; but I find it complicated beyond endurance and I am afraid that I am cowardly enough to take it for granted henceforth. Alexander says it is infinitely worth while whence I infer that I am mistaken. But Hume upset the world with a book I can understand as I move, and I don't see why Whitehead should not take the trouble to do the same. Of other things I have read one or two worth telling. I liked Edith Wharton's new novel, *Hudson River Bracketed*, a good picture of a perennial problem. I liked also Tomlinson's *All Our Yesterdays* which I beg you to read. It seems to me quite unquestionably a classic, and I should enormously like to hear just what you think of it. I read, too, a clever book by a Belgian professor. *La philosophie du droit positif* — one Dabin — an able defence of a modified Austinianism such as you would like. But he is also a Catholic, and it was amusing to note how medieval natural law *would* creep in every so often with the shy gait of a lady who knows that her virtue is suspect but who cannot avoid the temptation of a professional smile. For the rest, I have been bound grimly to work in the way of books, though as I am lecturing on the 18th century this term it is all pleasure. Never have I had the same sense of Burke's greatness; never also of the queer combination of greatness and muddleheadedness in Rousseau. I wonder if the misfit in the latter is the effort to be Montesquieu and Plato in the same book. There are things that otherwise, I find quite inexplicable; for relativity in institutions and an absolute pattern of the ideal do not lie easily in the same truckle-bed.

I have not brought much in the way of books save modern things. I had one big disappointment in Antwerp — a marvellous Suarez which I would have leaped at were it not that one volume was lacking. I bought a queer answer to Mariana which I had not previously seen and one or two pretty imaginary voyages of the 17th century, and, in its small way a prize, a first edition of Smith's *De Republica Anglorum* for five Belgian francs. But in general the Belgo-Dutch shops are cursed with the new mania for modern first editions got up on marvellous paper. Imagine

paying £25. for Maurois's *Shelley* or £30. for a decorated poem of Valéry's. Yet that kind of thing seems the rage just now. Let the printer give you immortality if you cannot win it for yourself.

Our love to you. Brandeis writes us that he has never known you in such good form.

Ever affectionately yours, H. J. L.

Devon Lodge, 25.1.30

My dear Justice: A week of pleasant work, varied by a visit to Norwich where I had to make a speech. I went, too, to hear the inauguration of the Naval Conference, but though the eloquence was terrific I did not hear anything definite said. I went also to the House of Commons to hear the second reading of the debate on the private members Bill for the repeal of the Blasphemy Laws.¹ Though decent liberty won, the debate was really appalling. Not one person who spoke knew the actual law; and the arguments against the Bill sounded like an excerpt from one of Calvin's sermons. And the fiercest opposition of all came from Eustace Percy who showed quite peculiar ignorance and obstinacy. His main argument was that this Bill would render religion inaccessible to children; why, God knows. Other members suggested that Tom Paine and Renan were obscene. Another was fearful of the danger of reprints from Renan and Voltaire. Another still suggested that no one had the right to publish anything offensive to Christians. The idea that Christians are not estopped from publications offensive to other people did not seem to enter his head. I came away feeling that people who really care for tolerance must be a special species of the human *genus*. We also have had a very pleasant dinner-party with much talk about you from a clever young lawyer (Haldane's nephew) who has been reading your dissenting opinions. He was immensely taken with *Adair* and *Lochner* and *Abrams*, and amazed that you were not speaking for the Court in the last case. I explained that you were speaking for the Court of the next decade.

In the way of reading, one or two things are worth remark. Norwich sent me to Thomas Browne whom I had not looked at since I was a schoolboy. Much the same feeling as being in a ducal house and using a napkin made of gold brocade. Very beautiful in spots, but not, I think, for daily consumption. I read also the Macaulay history again. It is great narrative. Except for the artless charm of Herodotus, and certain high moments of Thucydides (*e.g.* the Melian expedition) no one has ever touched his continuous level of narrative power. But I think he has two great defects. He isn't interested in ideas. I don't mind his bias, probably because I share it. But I think a page of Thucydides or Polybius gives you ten times the amount of insight that Macaulay supplies. Mentally he was

¹ The proposed repeal did not occur. See, *supra*, p. 1198.

the man in the street with a genius for telling a tale. But I don't think he explains. I guess that if he had lived to get from 1702 to 1789 he would not have given one any sense why men thought differently in 1789 from what they thought in 1702. He would have had a chapter on the State of England in 1789 and have rested quite content in the belief that a statement of difference is an explanation of difference. Then a volume on Franklin by a Frenchman named Faÿ, first edition of 75,000 copies which made my mouth water, for I could almost pay off the mortgage on this house with royalties like that. And yet I thought it poor stuff, and infinite accumulation of detail, not all of it illuminating, and much of it quite unnecessary to leave a complete portrait. Queer thing that *fureur de l'inédit*, and that belief that ten quotations from contemporary newspapers make a statement ten times more true than the one artistically right quotation. I read also G. Chinard's *Jefferson* which I thought quite good, but with the same faults as the other book. When I think of what Sainte-Beuve would have done with that material! And I read a work on the Reconstruction period called *The Tragic Era* by one Claude Bowers which did not make me content. He seems to think that the duty of the North in 1865 was to apologise to the South for the war; and he suffers from that Democrat-complex of the distressed Southern gentleman whose one dream had always been the noble treatment of the negro. A queer type of history that. From what he says, a war was an unnecessary luxury in which the North indulged because it was jealous of Southern intellect. I had not known that view could still exist in an average intelligent man. I have not, alas, found anything to buy, and I think I shall reserve myself for Easter when I think of having a week in Paris with a colleague. I have been hard at work writing — a lecture on Babeuf which I have got to print, and two brief papers for a German book which I promised to a very nice young *privat-docent* in Berlin. Did I tell you of the visit I had from a Russian jurist with a quite unpronounceable name who spoke no language I know and with whom I had to converse in dog-Latin in this fashion: "*Sententiam aevi Justinianis ut jus sit quod iussum est non mihi credere potest.*" Silence. Then he, after tremendous mental effort: "*Cur?*" Then I: "*Iussum nudum nihil est: relato inter consensum populi et voluntatem rei publicae substantiam juris gubernat.*" It was a great game ending "*O Collega, gratias ago tibi,*" etc., and a mutual wonder whether either of us had had the remotest idea of what the other had been talking about. He came from the University of Tashkent — of which I had, alas, never heard, in the Caucasus and spoke of "*quinque centum liberi*" which I think he would translate as five hundred students. I add that when he left, my nerve gave way and I laughed until I cried.

I have had a jolly call this week from Sprague the Harvard economist² who is joining the Bank of England as American adviser. He told me that Sam Morison is now widely spoken of as Lowell's successor — an appointment which would be really admirable, though he had no news of Lowell's will to retire. And he drew a very pleasing picture of Felix's influence in the Law School as easily pre-eminent. He spoke warmly too of McIlwain who is, it appears, writing a history of political philosophy, which is great news.³ He left me with a volume on symbolism by Whitehead which I read without being very impressed.⁴ The part on politics was neither original nor convincing. I gave him in return a manuscript of John Stuart Mill and told him that I was returning good for evil.

Our love to you as always. I am very anxious for news of you. By the way, I must not omit to tell you that my brother is taking silk in the next batch of K.C.'s — not bad, I think, at 39.

Ever affectionately yours, H. J. L.

Devon Lodge, 2.II.30

My dear Justice: I like the bust a great deal.¹ It is a little severe, and the curl over the forehead is somewhat exaggerated; those things apart, it has vividness and life in it. But you do not say who did it. Years ago, I remember that there was a Russian girl, Paeff, or some such name, a friend of Felix's, who wanted to do you. Is it by her?

I have been fairly leisurely at work, with some real time for reading, though next week my government committee begins in real earnest and I fear that leisure will fade away. We have had one or two jolly evenings. Alexander the philosopher spent a night here, full of the greatness of Whitehead's book, and insistent that it is the biggest thing in English philosophy in modern times. I asked him his views of the Americans, and was glad to hear him say that *inter vivos* he reckoned Morris Cohen easily the first. Then we had a dinner for Sankey and much legal gossip. I asked him why Sumner had resigned so suddenly at 71 — comparatively young

² Oliver M. W. Sprague (1873–), Professor of Banking and Finance at Harvard from 1913 to 1931, was Economic and Statistical Adviser to the Bank of England from 1930 to 1933.

³ C. H. McIlwain, *The Growth of Political Thought in the West from the Greeks to the End of the Middle Ages* (1932).

⁴ Alfred North Whitehead, *Symbolism, its Meaning and Effect* (1927).

¹ A letter from Holmes in which he enclosed a photograph of a bust, probably done by Serge Konenkov, is missing. For a photograph of the bust see 31 *Col. L. Rev.* opposite 349 (March 1931).

for a law lord.² It appears that S. has been bitten by the desire to make political speeches, as he thinks the country is going to the dogs; I don't know why. Years ago he was a sound radical, very hostile to the excessive influence of the aristocracy; but this seems to be replaced by an almost gnawing fear of taxation and the sense that he must go out on crusade. His successor, Hugh Macmillan, is the big man at the Bar since Simon retired from practice and has a great reputation. I asked Sankey if he would consider L. Scott when another vacancy occurred; but it appears that the bench thinks him, though an excellent fellow, too long-winded and slow. I'm sorry for I think he has deserved much more recognition than he has received. I also had a good time at the Prime Minister's to meet the Frenchmen, Tardieu and Briand.³ The first — did you ever meet him in Washington in the war — I thought brilliant. He is a little "slick," and nothing is really quite so clear-cut as he sees it. But for power of statement and incisive response I should rate him very high. Briand is, of course, incredibly subtle, Balfour with twice the charm, thrice the wickedness, and N-times the gentle malice. He seems to me rather exactly what Renan must have been like — delighting in nuances and the delicate art of putting pins into flesh too obstinate to creep. He said of Daudet the scallywag son of Alphonse (the great Monarchist Anti-Semite) that they let him return as the number of Jews in Brussels was not enough to cause him pain.⁴ Of Paul-Boncour,⁵ the socialist lawyer (who has the largest practice in France) he said that he was so eloquent that he was twice in danger of convincing himself; "luckily his wife is a practical woman." Of Lloyd-George he said that he makes one realise how much one must lose to be sincere. I am afraid that MacDonald lost most of this as he speaks no French, and to watch the genial irony in Briand's eyes when MacDonald uttered some idealistic *banalité* was a joy beyond words. . . . A malicious old devil, but extraordinarily fascinating.

In the way of reading one book above all which I recommend most earnestly to you. It is *England* by W. Dibelius, published in New York

² John Andrew Hamilton (1859-1934), Viscount Sumner, had been a Lord of Appeal in Ordinary since 1913; the *Dictionary of National Biography* indicates that his resignation in 1930 was caused by ill health.

³ At this time André Tardieu (1876-1945) was Premier, and Briand Foreign Minister. They were attending the Naval Conference in London.

⁴ Léon Daudet (1867-1942), Royalist editor of *Action française*, following his escape from prison had lived as a refugee in Belgium until January 1930, when the President of France, Doumergue, had pardoned him.

⁵ Joseph Paul-Boncour (1873-), lawyer and statesman, later was Premier and Foreign Minister; author of *Entre deux guerres; Souvenirs sur la troisième République* (1945).

by Harper. I think it is superb, really the best thing as a portrait that I have seen. It is quite admirably translated, and unlike most of its kind, goes along as easily as a novel. Please don't omit at least to look at it, for you will, I am sure, be really entranced if you once begin. I have also read an excellent book on Bayle by a young Frenchman, Lacoste. I must say he attracts me more and more. I *do* think he wrote the *Avis au réfugiés* and that his concealment was unjustifiable, but, that apart, I think him big in everything except his timidity in saying outright that Spinoza was, with Hobbes, the biggest man of that generation. I also reread the *Fable of the Bees* for a lecture in an edition by an American scholar, Kaye. I don't know a better piece of scholarship of its kind. Literally everything one wants between the covers, and yet nothing of the pedantry which so often disfigures an *apparatus criticus*. I also read a very interesting treatise on French constitutional law by Hauriou. Curious in the complete mental difference from Dicey. You would not think they were discussing the same *fonds* at all. And his own comments show that he himself, having read Dicey, was completely bewildered by "*L'empiricisme anglais*." He can't understand a constitution which lays down no general principles and is not, so to say, out there to be philosophised about. He wants metaphysics and can't find them in Dicey and is clearly genuinely upset. But he certainly made some very shrewd points against Dicey's view of *droit administratif*, and, I think, altogether destroyed the old man's complacency about our rule of law. I wish Dicey could have seen the five hundred pages of evidence on delegated legislation and administrative jurisdiction the departments have sent in to our Committee. I should like to have heard his comments, especially the complete absence of rules of procedure in administrative tribunals except at the discretion of the minister. All this kind of thing is worked out in detail by Hauriou and I think the general line he takes quite fair.

In the way of purchases I have not much to tell. A pretty copy of Bynerstoock to complete my set of the supreme people in international law, and a nice Viollet which I wanted badly as I had not the first volume, for some reason very rare. But, as I think I have told you, I save up for Paris next month.

Our love, as always, to you. Don't, please, overdo it while the Chief is away.
Ever affectionately yours, H. J. L.

Washington, D. C., February 14, 1930

My dear Laski: To write to you I rise from a bed of pain — no — not exactly that, but from a reclining chair where I have intended to divide the afternoon between slumber and listening to Walpole's *Letters* — a

most delightful occupation for the moments between vacuity and thinking. For I am resting after a slight bellyache and its concomitants last night, that I am inclined to attribute to overwrought intensity of work earlier in the week. I had to write a letter of farewell to the late Chief Justice on behalf of us all,¹ and at the same time felt bound to assign to myself a patent case that I thought no one wanted.² That doesn't sound much — but it was on my nerves until I got them both done. The answer came to me from the Chief today, this morning being the first time that he was well enough to sign since the day our letter was left at his house, and I have my opinion back from a majority agreeing to it. I guess the others will — and that the defeated side will apply for a rehearing hinting that we don't understand the patents and that the application will be denied in the belief that we damned well do. But I am just emerging to sunlight so to speak — and haven't done much. I have spent an hour or two on a French translation from German of Arthur Drews: *Le mythe de Jésus*. Within the last year or two I have read one or two other books on that subject which I am surprised to find that I have to take seriously. It is very interesting, although of course I don't care personally whether J. C. really lived or is the product of a Gnostic Myth. I have several things on hand when I can get at them — *inter alia* a volume of Henri de Régnier's poems — to see if I find in him what I generally miss in the poetry of the musos.³ But I shall not accomplish anything serious in my few free moments — even when I am relieved from presiding by Hughes who to my great satisfaction I learn today is confirmed by the Senate as C.J.

Extraordinary what people will say. Is it politics and dishonesty from a man who knows better — or credulous prejudice? A senator said to be able, &c., talked about Taft's resignation as compelled and part of a political job! Yet — by an unspeakable brutality there was in one or more of the leading papers a photograph of him caught between the train and his house — with every spark of intelligence gone from his face. He has recurrences when he is more or less himself, but I imagine has no prospect of life, or reason to desire it. Hardening of the arteries and other troubles, I understand. We shall miss him much — but I shall welcome Hughes as an old friend. I was too old to be thought of and I should not have wanted the place for the same reason. I have got beyond the time when anything that anybody can give me will satisfy or even gratify my ambition. The only thing that could be given at an earlier stage was

¹ On February 3 Mr. Chief Justice Taft had resigned from the Supreme Court. He died on March 8, 1930. For Holmes's letter see 2 Pringle, *The Life and Times of William Howard Taft* (1939) 1079.

² *Minerals Separation Corp. v. Magma Copper Co.*, 280 U.S. 400 (Feb. 24, 1930). No petition for rehearing was filed.

³ The volume of verse by Henri de Régnier (1864–1936), symbolist poet, has not been identified.

opportunity and that I have had. I haven't yet heard whether you have received and like the photograph of my bust. I think it flatters and it certainly pleases me.

I read Bowers' *Tragic Era* last summer and probably mentioned it. Your comment is just, and all the villains are republican, and the south and democrats saints. I believe he is to write the life of Beveridge — and I am somewhat doubtful whether Bowers will help Beveridge's fame. I have not yet seen Wu — who has been in Chicago and is now I suppose at the Harvard Law School. I gather that he has been warmly received and made a very good impression. I hope this will catch tomorrow's mail — but fear.

Ever affectionately yours, O. W. H.

Devon Lodge, 17.II.30

My dear Justice: A delightful letter from you warmed my heart. But no colds, if you please! At this time of the year they are terrifying. Let me put right at the top of this letter my really good news. Yale has asked me to go there next year and I have definitely accepted. No government committee on earth is going to interfere with this plan, so please expect me in Washington for your birthday dinner on March 8, 1931. And I am already excited about it.

I am full of work, but always pleasant and attractive. The committee on administrative law is now hard at it, and we meet for three hours each week. Curious how men define themselves on a committee with the job of analysing a problem. There are, I think, two main divisions, the slow and the quick, the people capable of ordered questioning, and those incapable of it. The classes aren't identical. Leslie Scott, for instance, is very slow, but his questioning is very good, while the M.Ps question very quickly but jump from place to place. I have been to a number of dinners. One, which Sankey gave to all the Labour peers (15) was most amusing. I had never dined before with a whole party. Taken as a whole they were intellectually good second-class, and about as conservative as a scattered handful of the Harvard faculty. The talk got on to Robespierre and I wish you could have heard the glorious and adorable ignorance of the French Revolution put forward with a solemnity only equalled by the solemnity with which it was received. The collective wisdom of the fifteen had never heard of a single historian since Taine and even Tocqueville was a person who meant nothing except to Webb. We had a jolly dinner here for Nevins, to celebrate his return from America. He is in good form just now and told some adorable anecdotes of his early days. Particularly good was a tale of Ruskin to whom he took a child's drawings. Ruskin looked at them with grave solemnity and said that they were above all remarkable for spiritual profundity! I had to

lunch the counsellor of the Russian embassy,¹ a clever young lawyer who told us amazing adventures during the Revolution. One tale is worth repeating. A peasant bought a horse and found that to work his farm properly he needed another. So he sold his son of 18 and got another peasant's horse in exchange. But this died within a week, so he sold his wife to the same peasant for a horse and cart. She died of influenza and the peasant who had taken the wife then sued her husband (the first peasant) for the return of the horse and cart. The Soviet Court decided that the cart must be returned but that public policy demanded the retention of the horse as its new owner was using it to good advantage!

In the way of reading, there are one or two things I want warmly to commend. I do urge you to read *Humanity Uprooted* by Maurice Hindus, a very remarkable study of the psychology of the new Russia which I thoroughly enjoyed. Then Felix's book on the injunction which I thought *most* illuminating, though rather long and a little over-equipped with the scaffolding of research. I read Maurois's *Byron*, very pleasant and charming, not the Byron I know, but a really clever picture. An excellent book by C. D. Broad called *Five Ethical Philosophers*, a study of Spinoza, Hume, Kant, etc., extraordinarily vivid and subtle and honest. If it comes your way I am sure you will like it, if only for the wit with which it is spiced throughout. I also read a vast book by one Catlin of Cornell which in nearly 600 pages tells one that politics is the science of power and that men are most anxious to get power if they possibly can — a not very illuminating result after 600 pp. of enquiry.² I add an attractive French book on Bayle by Lacoste which brings out the scholar's personality in a very attractive way. There ought to be a good English book on Bayle and undergraduates ought to be taught to regard him as a landmark.

I shall be interested to know what you felt about Hughes's reappointment. I did not share the objections I saw voiced by the *New Republic*³ as I believe him to be an honest and able man, and I don't find myself bound to dislike an appointment because I dislike a man's views. But I am sorry for the precedent which allows a man to get off the bench, try for the presidency, and then on failure, get put back again as a reward for political services. Also I think the C.J. should be chosen from among the men on the bench; it ought to be a recognition of quality of work done there. I hope there is better news of Taft. I always had a real affection for him in the days when I saw something of him.

In the way of purchases I have one or two pleasant things. A very nice Vattel which I rather cherish because it belonged to Stowell and was given to him by Eldon, and I thought that really rather a good bargain for

¹ Dimitri Bogomoloff.

² George Edward Gordon Catlin, *A Study of the Principles of Politics* (1930).

³ 61 *New Republic* 310 (Feb. 12, 1930).

fifteen shillings. Then I got a pretty volume *Les plagiats de J. J. Rousseau* in which the critic, a Jesuit, shows not without real skill how much of Rousseau is stolen from Locke without due acknowledgement.⁴ And I bought at auction, with very great pleasure, and for £5, a complete set of the *Harvard Law Review* down to 1920, so that with a very small outlay I shall be able to bring it down to date. And a very nice copy of Mirabeau's *Ami des hommes* which I bought for ten shillings and found to my complete and astonishing joy to be worth about twenty pounds. Blessed are the searchers for they shall be rewarded for their industry.

You will be amused to know that I have brought down on my head the angry temper of all the free thinkers in America. I reviewed Robertson's *Free Thought* and said that he praised Ingersoll excessively, that Ingersoll was a "clever rhetorician but hardly either an original or a profound thinker."⁵ So letters pour in telling me that Ingersoll was a kind of rationalist Jesus who changed the face of the world. One angry gent. told me that Ingersoll was one of the four greatest men who ever lived — the others being Washington, Lincoln and Edison! O God, O Mont-real.

Our love to you both now and always.

Ever affectionately yours, H. J. L.

Washington, D. C., February 27, 1930

My dear Laski: As usual your letter (17.II.30) suggests many themes for discourse. As to Hughes I was more pleased by his appointment than I could have been by any other. I took luncheon with the President and Mrs. Hoover last Sunday and she told me that the President would have liked to appoint me &c. &c. but thought that I ought not to be burdened &c. &c. It is true that I did not want to be, and no longer care for anything that anyone can give me. I never did very much. I would rather, I say in all seriousness, have your article in *Harper's* than the Chief Justiceship.¹ That and a few other things like it are the only rewards except the work. I don't so much mind Hughes having left the Bench and coming back. Lots of our judges have had the presidential bee and as to appointments by way of promotion I should adopt no formula. I thought when White was appointed that every judge except McKenna and me with or without his concurrence had a claque that was urging his merits. If

⁴ *Les plagiats de m. J.-J. R. de Genève sur l'éducation* by D.J.C.B. [Joseph Cajot, 1726-79] (1766).

⁵ The review has not been identified.

¹ "Mr. Justice Holmes: For his Eighty-Ninth Birthday," 160 *Harper's Magazine* 415 (March 1930); reprinted in *Mr. Justice Holmes* (Frankfurter, ed., 1931).

Hughes could have been appointed then as was expected (but it was said that the opposition was too great) I think the history of the Court's doings would have been better than it is.

Later — Coming home this p.m. Brandeis spoke of the beauty of your article — and others have done so. As I wrote to you before I shrink from speaking yet and almost from reading it — for fear that it should somehow vanish — or you take it back.

Wu is in Cambridge and has sent me his photograph and a bit of autobiography, compiled he says at the request of Wigmore. I felt bound to write to him a letter that may destroy his regard for me, noticing the good opinion he seems to have of himself and cautioning him not to take too seriously compliments paid more readily to a visiting foreigner than they would be to a chap working his way up from the bottom here. More especially did I end on that while philosophic generalization was the last reward of serious work it also was the escape of people who weren't willing to tackle the details &c. &c. I may be all wrong — but I have felt as if he was dodging the grind of life and as if I shouldn't do the square thing unless I said a word. But I hated to — perhaps he will absolve me from all further responsibility and repudiate me, my ways, works and machinery. I don't believe he will — but if he does, then I owe him no more. Poor little cuss — there is a *naïveté* in the way in which he repeats the not too many compliments that he has received, that rather goes to my heart. I think I may have mentioned *L'Homme blanc — Souvenirs d'un Pierrot — par Le mime Séverin*. That is the last illustration of the lesson I should like Wu to learn — the very severe training that Severin went through and believed necessary to become what he was — and clever young men and women in Paris that said, "Oh, no — feeling is the thing, and if you have talent you can do the trick." I did delight in Severin's scorn of such. Probably I have quoted to you the artist Bill Hunt's remark to a pupil: "Oh I see, you want to do something damned smart, right off."

We are sitting — and I have been busy from 9:30 to 6 which it now is. I propose now to extend myself in a reclining chair and let my secretary read Horace Walpole's *Letters* — from now till I sleep or go to dinner whichever first happens. *Affectionately yours, O. W. Holmes*

Devon Lodge, 22.II.30

My dear Justice: If my reckoning is just, this ought to reach you in Washington on or about your birthday. So it brings you all sorts of affectionate good wishes from us both. If you will look in *Harper's Magazine* for March you will find my birthday present. I hope it will give you half an hour's pleasure. It was difficult to put the joys of fifteen years friendship

into words; but I hope some faint emanation of my pride in you is there.

The week has gone abominably quickly. Monday night, a gloriously funny dinner at Sankey's to meet all the Labour peers; the S.G.¹ and I the only commoners present. Feelings on my part (I) that they are a damned poor lot as a whole (II) very conscious of their dignity (III) terrified that the Lords may one day be reformed and they disappear. The one really bright moment was when Earl Russel² said to me that Bertie (his brother) was not yet up to the family average in wives. He, I gather, has had three; and the last ("Elizabeth") refused to divorce him on the ground that it would be unfair to other women. I went also to a jolly lunch given to young Broglie,³ the French physicist who got the Nobel prize. About a dozen were there, and I had the sense of being in quite a new world from our own. Immense ambitions freely expressed, but always selfless ambition; passionate reverence for a good piece of work; enormous pride in clarity; and utter lack of anything like worldliness. It was a great moral lesson to sit and take note of the types one saw there. They were all great men in that ultimate sense of having surveyed some fragment of the unknown horizon; and yet not one of them cared for the kind of glory by which the politician lives. A good essay lies buried in this theme.

Of reading some pleasant things and some unpleasant. *The Maurizius Case* by Jacob Wassermann, an immense and powerful German novel, hardly inferior, I think, to Dostoevski. Catlin's, *Principles of Politics*, a gift, and bad beyond words — the kind of book which makes 30 pages of real stuff into five hundred and decks it out with innumerable quotations in a dozen languages to convey the appearance of profound erudition. Maurois's *Byron*, which is quite charming and for the likes of us who don't want innumerable details about the way he cut his nails, amply sufficient. A good law book by C. K. Allen of Oxford — *Law in the Making* — which would, I think, give you pleasure if you have time to glance over it; it isn't original, but is a real cut above books like Holland and Salmond which in England have so long done duty for jurisprudence. And it marks the fact that the reign of Austin in English circles is over, that people actually are beginning to realise that Gierke was an important person. Then Vinet's *Pascal* which I had never read before — an exquisite book, I should say the best ever written on him, tender, delicate, with a genius for the right phrase and a subtlety of insight I should not have expected outside Sainte-Beuve. And there is a certain stark beauty in

¹ Sir James Melville (1885–1931).

² The third wife of Earl Russell (1865–1931) was the Countess Russell whose novels were published under the pseudonym "Elizabeth."

³ Louis Victor, Prince de Broglie (1892–), in 1929 had received the Nobel Prize in Physics for his formulation of the theory of the wave character of electrons.

Vinet's style which, perhaps fancifully, seems to me to mark the difference between the pliancy of the Catholic and the sterner demand for principle of the Protestant. It turned me back to Pascal himself. I could write a book about him which would begin by recounting how mathematics was to take a great step forward, ethics to have another Spinoza, when the damned Church came along, and, as always, ruined a great mind by sacrificing balanced happiness to the morbid pleasure of meditating on damnation. If the Russians *are* persecuting the Churches (which I doubt) it is a poor little tit-for-tat for fifteen hundred years' misshaping of human character.

I have bought some pretty things. A nice first edition of Rousseau's *Letter to D'Alembert* which pleased me because some advertisements of Rey the publisher enabled me to send a half-column note to prove that Dufour's account of what he took to be the first issue is wrong⁴ and that mine is earlier than the one he described by three weeks. I don't know why on earth this *should* give one pleasure but it does. Then a nice first edition of Harrington's *Oceana* was given to me by an old student and I therefore sold my own copy and bought a superb Savigny which would make you green with envy at its appearance. Frida says that anyone who dresses so well as its seven volumes must be of doubtful virtue, but it really is superb. And an unexpected cheque arriving I bought the bibliography of *Mazarinades* done by Moreau seventy years ago and have by careful annotation found out who wrote most of the originals I possess or the part of France in which they were written — an amusing occupation. I had a great triumph in a bookshop by knowing the real first of the *Leviathan* — and the bookseller was so grateful that he *gave* me — I repeat gave — a copy of Winstanley's *Light Shining in Buckinghamshire* — on which see Gooch, *Democratic Ideas in the 17th Century*.

That, I think, is my tale for the moment. But the main thing is your birthday. We shall drink your health here in the one bottle of Clicquot 1911 we possess.

My love as always,

Yours ever affectionately, H. J. L.

Devon Lodge, 2.III.30

My dear Justice: Harpers were really wicked to send you an advance copy; I intended it to reach you on your birthday. Let me say only that if the article gave you half an hour's pleasure, I am happy indeed. It was a joy to write it, for I had long wanted to proclaim some such feeling from the house-tops.

⁴ See *Correspondance générale de J.-J. Rousseau* (Théophile Dufour, ed.), vol. IV (1925), pp. 25–28. Marc-Michel Rey (1721–1780) was a Swiss printer in Amsterdam who was a friend of Rousseau and published the first editions of many of Rousseau's works.

The days have simply flown this last week. A visit to Oxford, a lunch with Dwight Morrow¹ (a good fellow), a dinner with Miss Haldane, and a reception at the Foreign Office, beside the usual round of work and committees have taken up time. Oxford was very pleasant. It was amusing to be treated as an "authority" by undergraduates and so to realise that my vanity was tickled; and I had some pleasant talk with Holdsworth who, if dull, is full of knowledge. I learned from him one tale which is a pearl of price. Jenks, whom you know, applied to Birkenhead when the latter was Lord Chancellor to be made a K.C. In reply, he got the following letter: "My dear Jenks, In 1897 you gave the present L. Chancellor a second in the B.C.L. In 1898 you gave a second also to the present Vinerian professor.² These are, I think, sufficient honours for a single lifetime. Yours faithfully, B". A superb letter, I think, which only Birkenhead would have the intolerable audacity to write. I saw also Herbert Fisher who told me (and it pleased me) that almost the last time he saw Leslie Stephen the latter told him that his happiest memories of America were some talks with you. Dwight Morrow I liked greatly, and he told me the secret history of his Mexican negotiations which were genuinely medieval in character. At the Foreign Office I saw a multitude, but the outstanding person was a young Spanish lawyer who shared all my interest in, and enthusiasm for Suarez and Co. and we talked in a corner for an hour. I was amused by an American there who told me that if ever I went to Washington he would be glad to give me an introduction to James Brown Scott³ who had great influence and might do something for me; and by a Japanese who told me, in their gloriously flowery way, that my books had been "the revered companions of his weeks and months." Miss Haldane showed me some interesting letters from Asquith to her brother written in the early 'eighties and suggesting the Woolsack as the one thing he coveted. As you know, he could have had it twice in after years and refused it, a queer thing, for he would almost certainly, with his lucidity, his conciseness, and his gift of phrase, made a great Chancellor; and I remain convinced that he was not a good P.M. a fact which, I think, Haldane brings out very well in his *Autobiography*.

In the way of reading, there is not much to tell. At Arnold Bennett's request I tried H. James's *Golden Bowl* and found it quite intolerable, long-winded, precious, and absurd. I stuck about p. 50 and gave it up.

¹ Dwight Whitney Morrow (1873-1931), lawyer, banker, and diplomat, had been made American ambassador to Mexico in 1927, where he had skillfully settled hostilities between the Mexican government and the Roman Catholic Church. At the time when Laski saw him in London he was attending the Naval Conference.

² Sir William Holdsworth.

³ James Brown Scott (1866-1943); diplomat and prolific author on problems on international law.

But I read for the first time *Feregrine Pickle*, and thought it adorable, especially the interleaved Memoirs of a Lady of Quality. Amusing to note how pure beauty in distress is a kind of standing exhibit in English fiction and does not appear in the literature of any other country. Then an interesting book by one Proal on the medical history of Rousseau. It is pretty clear that today a fairly simple operation on the prostate gland would have cured most of his problems. And a *very* good book on Descartes by Gilson of the Sorbonne — the clearest explanation I have seen of exactly how Descartes is differentiated from the medieval people with a careful account of the way in which the new approach was gradually victorious. I have kept the best to the last — a novel by P. G. Woodhouse called *Jill the Reckless* which you must have read to you over solitaire. I picked it up on the station at Oxford and laughed until I cried in the train. It isn't new, but of its particularly English type of nonsense-humour I can only describe it as supremely excellent.

I have bought one or two books which have pleased me. A nice Mme. de Staël on a bookstall in Caledonian Market for two shillings in 7 morocco bound volumes, and a very pretty Turgot. But in one respect my heart is broken. There turned up at an auction a fine set of the Year Books on which I bid twenty pounds; it brought £75 as two American libraries fought one another for its possession. I daresay their need was greater than mine, but they have permanently ruined the market by running up the price like that.

I have one literary tale to tell you which you will like. You know that recently all Boswell's mss turned up, to everyone's amazement as Malone said quite specifically that B. told him "they were all burned in their box." Now a young lecturer after reams of discussion whether Boswell deceived Malone, or Malone made a mistake, and half a dozen such things, comes along and suggests (I) that Malone wrote not *burned* but *buried*. (II) that he did not dot the *i*. (III) that the printer read it as "burned" and as Malone was dead no one could alter it.⁴ As the mss did turn up in a box, the lad is, I imagine, obviously right, and I think it the best emendation since Theobald got the "babbled" into the description of Falstaff's death. Don't you think so?

I am sending you separately a little book on the Age of Reason in which you will find a lecture of mine.⁵ Most of them, I fear, are pretty obvious; but I think you will find some novelties in the lecture on Holbach and Helvétius.

⁴ See *Private Papers of James Boswell from the Malahide Castle* (Scott and Pottle, eds., 18 vols., 1928-1934).

⁵ *The Social and Political Ideas of Some Great French Thinkers of the Age of Reason* (Hearnshaw, ed., 1930). The introductory lecture, "The Age of Reason," was by Laski. The lecture on Helvétius and Holbach was by W. H. Wickwar.

Our love to you. Keep well and let Hughes relearn the habit of work.
Ever yours affectionately, H. J. L.

Devon Lodge, 16.III.30

My dear Justice: I have had a busy time since I wrote last, including three days in Newcastle, arbitrating eight industrial disputes. I don't know anything quite so difficult as to sit for eight or nine hours without making any observation which indicates your point of view. But I got through them with the help of some novels, and came back feeling like a tired God. I have also spent some time helping a little at the Naval Conference. That led to a pleasant dinner with George Rublee¹ and Dwight Morrow who both gave me some pleasant personal news of you; and I went to see Briand for the P.M. and came away feeling that I had been talking to an incarnation of the whole eighteenth century. Briand is diabolically clever, utterly cynical, and with all that hideous French logic which so often and so utterly misses the point of life. He said many clever things, and he seized my own points with remarkable quickness. But he never sought *once* to relate his view to mine. We were always driven back to his premise which was a sacred cow not to be milked. I got, moreover, the impression that he was too old and tired to care very deeply what might happen. George Rublee, by the way, said one thing that interested me, that Stimson would have been much more valuable as a delegate here if they had brought along Felix as his aide; for Felix was the one person who could make Stimson a first class man by his own perceptiveness. Of other things, I have had two or three meetings of the Donoughmore Committee,² always interesting, and a discussion of the future of the Spanish monarchy with a group of exiles which was like nothing so much as a page out of a Dumas novel. I had Manley Hudson and Borchard (of Yale)³ to lunch; the former I thought rather pompous and absurd, though he passed some strictures on Pound which interested me; Borchard I thought both learned and charming, and capable of passionate feeling on the remoter issues as when he launched into a fierce denunciation of Brandeis for his attitude to the declaratory judgment.⁴ And, by the way, Brandeis sent along a charming St. Louis journalist to see

¹ *Supra*, p. 111.

² The Earl of Donoughmore was Chairman of the Committee on Ministers' Powers.

³ *Supra*, pp. 897, 964.

⁴ In a number of cases Mr. Justice Brandeis had indicated that the judicial power of the United States did not extend to the issuance of so-called declaratory judgments; see, *e.g.*, *Willing v. Chicago Auditorium Association*, 277 U.S. 274 (1928). Professor Borchard was crusader for the declaratory form of judicial relief; see his book, *Declaratory Judgments* (1934).

us (name, alas, forgotten)⁵ who was a specialist in Holmesian lore and would, I believe, have passed a joint examination from Felix and me — perhaps the supreme test. I must add the visit of a Spanish professor who was researching into Tudor England, felt it his duty to vindicate the character of Bloody-Mary. I explained that I had not the least objection to his vindication of her or anyone else. He then said that it was understood in Spain that Englishmen felt very hostile to her and he did not want to accept my hospitality under false pretences. Could anything be more charming? Imagine my explaining to an American host that I intensely desire to vindicate the memory of Chester Arthur and must be received only on that understanding. It is at least a fine gesture as an exordium.

In the way of reading, there are one or two things I must mention. First, Maurois's *Byron* is both charming and competent and I hope you will trifle with it. For me at least it explains one side of B. I have never understood, namely his persistence in cruelty. Its weakness is that it does not make you see why the kind of man he draws should have swept over Europe like an event. Then a book *Ne Obliviscaris* by Lady Frances Balfour which amused me beyond words. She is the daughter of the Duke of Argyll who wrote that *Reign of Law* which might compete for a place in the list of the hundred worst books, and a sister-in-law of Arthur Balfour. What is thrilling in the book is its tone. She always refers to her father as his grace, to the Queen *et al.* in terms of Majesty. She describes the people outside her cenacle of aristocracy as "George Meredith, later well-known as a novelist," or "Rodin, who obtained fame as a sculptor." She talks quite seriously of "Millicent, Duchess of Sutherland who has a secure place in history as a hostess" and of "one Richard Jebb who was admitted to society on account of his eminence as a scholar." When an English aristocrat is an unconscious snob, she can, I think, make the art reach a level to which no other people can even hope to attain. I spoke of her to Mrs. Asquith the other day, and she told me that Lady F. never forgave her husband for admitting a "workman" to the cabinet. The "workman" was Lloyd-George who at the time was a solicitor. Evidently below the bar one ceased to be a gentleman. Is it not as I say, superb? She remembers what she wore at dinners and how she dealt with recalcitrant servants. If I could have forty pages in the *Quarterly Review* about her and string some quotations together, I verily believe I could make her immortal. I also read a book Sam Morison has edited on Harvard in the last half-century⁶ which brought back some very pleasant

⁵ Charles G. Ross (1885–1950) was chief Washington correspondent for the *St. Louis Post Dispatch*, 1918–1934. In 1945 he became Secretary to President Truman in charge of press relations.

⁶ *The Development of Harvard University, 1869–1929* (S. E. Morison, ed., 1930).

memories. I note with interest that whereas Eliot seems to have found Harvard men to build with, Lowell's Harvard choices have been people like Harlow Shapley⁷ and Haskins whom he has brought from outside.

I must add one thing upon which you are not to comment. Brandeis and Cardozo, JJ. have written to me letters about that *Harper* piece of mine which could not be more kind had I written about them. And Miss Haldane wrote to me to say that her brother would have endorsed every word of it.

My love to you, as always.

Ever affectionately yours, H. J. L.

Washington, D. C., March 27, 1930

My dear Laski: You do write such delightful letters that I blush to think what a poor return I have made. Especially in these later days. But I am and have been pretty constantly driven. I have had (*entre nous*) a most important case on the withdrawal of water from the Great Lakes to write¹ — more *certioraris* than you could shake a stick at — answers to birthday letters — more than 200 have been despatched — and every morning an hour's work imposed on me mostly by bores. This morning just after I had sent round my opinion the C.J. came in for me to write two little fellows — as it seemed necessary from the division of the Court. But I must at least begin an answer to one received this morning with several matters that I can't keep quiet about — (1.) your admirable statement of "that hideous French logic which so often and so utterly misses the point of life." I often have made the same reflection less happily expressed. (2.) But before I go on let me tell you with what delight I read your Introductory Chapter on the Age of Reason. It is admirable. (2.) [*sic*] I was going to express my joy over your Spaniard and his scruples about accepting your hospitality until he had explained his attitude to Bloody Mary. That and the enchanting account of Ly. Frances Balfour tend slightly to illustrate my axiom that a gentleman can't be a philosopher (or a philosopher a gentleman). But (3.) I didn't suppose that it still was possible for anyone to write in the tone of the lady as you quote her. The world changes very slowly — you optimists must remember it.

Just here Gerrit Miller and his wife came in and cut this short for I want it to go in the morning. I feel as if I had not written for a thousand years. I read to Miller the passage about Ly. F. Balfour — saying as above that I shouldn't have thought it possible — whereat he reminded

⁷ Harlow Shapley (1885–), the distinguished astronomer, had been called to Harvard in 1921 from the Mount Wilson Observatory in California.

¹ *Wisconsin v. Illinois*, 281 U.S. 179 (April 14, 1930).

me of an English translator of the *Malleus Maleficarum* writing well after 1900 exactly as he might have written when the original work came out. That also was incredible but there it was. I must add that your article in *Harper* seems to have made a stir among people who are impressed by the beauty of the writing. The other day on motion of Mr. La Follette it was printed among the Congressional documents.² I remember feeling very proud when a speech of mine was printed there — but that was on Cabot Lodge's suggestion — whereas I suppose La Follette is a stranger to you as he is to me. Owen Wister was here on Sunday and has sent me a life of Lafayette — 2 vols. by Brand Whitlock — which he found interesting. The Parker House sends a history of itself with some old Boston in it that really drew me from duty for a few minutes & Miller wanted to leave a book about Casanova in London which I declined being too balled up — I fear that you don't care for Casanova — one of the best of books. Miller also showed me a lot of modernist etching and lithographs which didn't hit me hard — He said they were trying to do something new — and that to repeat what had been done was a bore. I told him I thought it better to keep on the old paths unless one really had something new to say — which reminds me of Joyce's *Ulysses* — of which I have read a few pages. I read in the *New Republic* that Joyce was a great poet — or at least a poet. He may be, but he has such an abnormal hankering for nasty words and disgusting thoughts that I don't expect to read more than a specimen. I should think there was something wrong in his nut. But I *must* go to bed. Good night.

Affectionately yours, O. W. Holmes

Devon Lodge, 6.IV.30

My dear Justice: A delightful and welcome letter from you reminds me that I have not written to you since I returned from Paris. I had ten ecstatic days of sunshine there. Each day I hunted books; each night I dined and talked until the small hours. Except the politicians, whom I studiously avoided, I saw nearly everyone I wanted to see — Émile Meyerson, the philosopher, Lapradelle, the international lawyer, André Gide the novelist, Halévy the historian, and critics galore. The best night, I think, was one where I dined with half a dozen of the critics, and we fought the battle of romanticism all over again. You cannot even imagine the passion it engendered. That Racine and Bossuet and Boileau were the

² On March 8, following a birthday tribute to Holmes by Senator Walsh of Massachusetts, Senator Robert M. LaFollette, Jr., of Wisconsin moved that Laski's article in *Harper's Magazine*, "Mr. Justice Holmes: For his Eighty-Ninth Birthday," should be printed in the *Congressional Record*. See 72 *Congress. Rec.* (71st Congress, 2nd Session), part V, p. 5008.

essential France; that Rousseau and Mme. de Staël and Hugo perverted the French genius; that only a return to the qualities of the 17th century can restore the greatness of France — these they maintained with a vehemence I cannot produce in it. I caused what I can only call consternation by arguing that classic and romantic are false antitheses — that each is a requisite of intellectual health, that romantic sensibility made men see beauties worth seeing and never before seen, that an affirmation of personal experience as valid against the tradition is one of the ways of adjusting that tradition to new wants which must find response. One excited soul got up and said I was a traitor to the Hellenic spirit — that I had been willing to *conspuer* the sacred beauties of France. Another argued that only by fidelity to the classic tradition could we distinguish between true and false, right and wrong, beauty and ugliness. For another still classicism was reverence, self-restraint, discipline; for another still, the monarchy and the church, parents of French glory. I asked if between 1830 and 1930 I could be given one Frenchman of genius who had dwelt in the classical tradition — answer in the negative. I said that if a century could not *create* in a tradition that meant its exhaustion as a vehicle of expression. Answer, let us be exhausted, but let us at least expel from our literature alien elements which corrupt the purity of our spirit. I wish you could have seen it all. Life being sacrificed to logic with a glorious disregard of everything significant in our time that made me feel as though I was dwelling with the last of the Mohicans. I was interested to find that Meyerson had a tremendous respect for Morris Cohen and an equal contempt for Bergson. And Gide tried to explain to me that James Joyce's *Ulysses* was a European portent; to which I replied that the willingness to write the vocabulary of the latrine in a book did not seem to me epoch-making. I was impressed by the universal commendation of Ernest Hemingway, whom all the critics I saw regard as the promise of America, with dos Passos a very close second. But what is striking, and, I think, a little painful, is that the American writers they know are chiefly what I may compendiously term the anti-Americans. People fifteen years dead they do not know at all; and people I regard as important, like Willa Cather, they do not know because she only depicts America and does not criticise it. Much the same is true of their attitude to ourselves. They translate the precious and the esoteric; they hardly know what is central and explanatory. Indeed I should be tempted to say that they read foreign literature in order to thank God they are not as other peoples are. But they retain a marvellous power of discussion for the glory of discussion. They have their sects and chapels, but they feel that intellectual differences really matter. That makes them nearly as delightful as they are insular and wrongheaded.

My book hunts were adorable. I bought a good deal, mostly the essen-

tial contemporary criticism of Montesquieu, which has, I think, an unexplored import in the light of 1789. . . . I got, too, some nice law books, and a pretty collection of first editions of the Physiocrats. So, altogether, I came back really exhilarated and ready to cope with life.

Since then, I have been at committees and doing a good bit of writing — all in a leisurely way. I dined the other night with Dwight Morrow and we condoled over the fizzle of the Conference. I had here a good fellow named Ross, of the *St. Louis Post*, a friend of Brandeis's who was able and attractive. A friend's wedding, at which I saw Blunden, the best of our young poets, who told me that he would die happy if only he could be certain that he would have a chance of telling God his frank opinion of him, and an amusing tea-party at a musician's in which people cursed each other in ten or eleven languages and confided in me about the demerits of one another as musicians. I found that all went well so long as I said Bach at stated intervals. Frida fared less well, for she speaks Swedish like a native and found a lonely Swedish pianist who confided to her the intimate history of his three marriages and the difficulty of discovering a *petite amie* in England who could talk English to him. He even hinted that if she were available * * *. Frida, I thought, got out of it well by saying that he ought to consult her husband on the point.

I was pleased — vain creatures that we are — by Senator La Follette's action about my article. But even more I have been touched by the number of Americans quite unknown to me who have written me notes of thanks about it. Clearly to be your friend is to be the friend of people who care for what is best in American life.

Our love warmly to you. From now on I venture to resume weekly discourse.

Ever affectionately yours, H. J. L.

April 18, 1930

My dear Laski: A wonderfully interesting account of your jaw with the mussoos about classicism and romanticism, etc. Of course they seem to me as to you ridiculous. But that we must discount, for it means that you and I tacitly assume *our* aesthetic ultimates to be valid against theirs. I think they are because I think them founded on a wider view — but if the Frenchmen think not, we can't patronize them before a dispassionate tribunal, although of course we do between ourselves. I often think of the way our side shrieked during the late war at various things done by the Germans such as the use of gas. We said gentlemen don't do such things — to which the Germans: "Who the hell are you? *We* do them." There was no superior tribunal to decide — so logically the Germans stood as well as we did. That case reminded me of a *cause célèbre* in a yearly collection that used to be put out by Albert Bataille from the

Figaro.¹ A duellist was tried on the ground that he had done a forbidden thing — grasped his adversary's weapon — and a lot of experts testified that that couldn't be done. Then a lot of duellists went on the stand and said that is a fencing school rule — when you go on the ground you go there to kill the other man and may do what you can. Probably I have told you of this a dozen times before, as it is a stock illustration of mine. But to use another stock phrase inverted — you must deal with friends as you do with great men and let them bore you if you want to get the themness of them. I agree with your French philosopher whose name I can't read as to Cohen — and in a less certain degree as to Bergson. As to Ernest Hemingway, perhaps — Dos Passos I know only by name. Willa Cather I know only a little — by one book — name forgotten — that didn't impress me greatly.

As to the French critics feeling their intellectual differences — I remember a French book of interviews with the then young *littérateurs* — it must have been 20 years ago, for Zola was in it as an older man saying that these young sharks when they couldn't find anything else to bite devoured each other — well they all talked with ferocity as if they were divided by gulfs — and to me they seemed like smoked herrings in a box. They all tasted alike.

I am going on much as usual. Occasionally a dame feeds with me — preferably at luncheon as I am tired at night. Some time ago as perhaps I told you Mrs. Hoover came — *per quod* I had to break my rules and lunch with her and the President (no one else) and found it very pleasant. I have almost no time to read. I am much bothered by many letters that call for an answer to which they are not entitled. Just now I have a collection of essays called *Human Biology and Racial Welfare* that seems worth reading — though intolerably heavy to my hands, as cheap American books are. It seems to promise a good general view — beginning with Life in Space and Time — (the guess as to life on other bodies than the earth) — then Evolution traced biochemically — then the animal ancestry of man — the Evolution of the brain &c. &c. I think it will pay me. My sec'y has nearly finished reading aloud to me at the end of the day — *The Story of San Michele* by Axel Munthe. He is a real man I am told — and his tower of San Michele is very like a place that an Englishwoman whom I have met at intervals has told me about. I should think it might be truth in a haze. But I shall be glad to get back to my last volume of Horace Walpole. H. W. seems to have been a pretty good fellow and, in flashes, ahead of his time. But I must away from you — and turn to less intimate things. Affectionately yours, O. W. Holmes

¹ Albert Bataille (1856-1899), journalist and reporter of criminal cases tried in the French courts; his accounts of cases were republished in book form.

Devon Lodge, 12.IV.30

My dear Justice: The week has passed very quickly in a shower of committees and similar distractions. I had a jolly talk yesterday with Stimson, your secretary of state, who spoke most warmly of you; and I lunched today with Lewis Einstein and we exchanged memories of you very happily for two hours. He is really a civilised creature, and I am sorry he has decided to leave the Diplomatic Service. I went also to lunch to Sankey to do some confidential cabinet work. What in it is worth reporting is the fact that it turned on some proposals of Webb which he had adumbrated in a memoir to his colleagues of eighty pages. Sankey was disturbed and said they would be impressed by its weight. Not at all, said I, they won't read it because it is so long. Let us set out its conclusions on one page, and smash it in three. They will read our summary and leave Webb severely alone. And so they did. Webb, I gather, was the only person at the Cabinet who dissented from our memorandum, and Sankey was triumphant. So am I, since the lives and fortunes of about three million African natives were involved. Then I was shipped off by the Ministry of Labour to Manchester to settle a docker's lighting strike. It was very amusing. Any fool could have settled it in an hour by letting the men talk themselves out. The harbour master was one of those retired naval captains who glory in being truculent and calling it the maintenance of discipline; in a month he had everyone foaming at the mouth. So I got the trade union leaders in a room with beer and tea and made them tell me their life-histories. This enchanted them; and when I was calling the secretary by his first name, which took 1 and $\frac{1}{4}$ hours, I asked as an incident what the strike was about. He explained that the men would not be sworn at. So I went into the harbour master and told him I was going to lecture him in the presence of the men; the alternative was his dismissal. He took it very well; I spoke to him with great severity for five minutes; told the men that they must be back at work in an hour; got a written pledge of no victimisation; was presented with an electric torch by the men; and was on the way home within three hours of arriving in Manchester. So life flows on. Another amusing thing was a Ph.D. exam of an Indian student who had written the worst thesis I have ever seen. One sentence in it ran "Great lawyers, Ulpian, Grotius, Wigmore have contended"; I asked him if he thought that Wigmore was quite on the level of the others and he said "yes" without hesitation. He quoted Althusius in German and did not know he had written in Latin; and at one place he had translated eight pages straight, without acknowledgement, from Viollet. When I suggested to him that this was not exactly fair, he said glibly that he thought that his translation carried with it a nuance that made it his own! O God! O Montreall!

In the way of books, I have read one or two things worth recording. A quite charming biography of Wilkes, the 18th century radical, by R. W. Postgate;¹ a short book on romanticism by P. Mansell Jones² which was attractive and learned, a rare combination; and an introduction to the theory of criticism by Charles Maurras, which I thought the most brilliant defence of classicism I have ever read; I add that I disagreed with almost all of it. I want, too, very eagerly to recommend to you a pamphlet by Logan Pearsall Smith (Oxford Press) called *Four Words*. It is a history of the words romantic, creative, original, genius, and I found it more than exciting. There's nothing like watching a man with really flawless taste exhibiting his wares. *À propos*, Einstein brought up James Joyce; I gathered that he thought him more important than I am prepared to do. I do not, as I think I have said to you, see why the full account of latrine functions makes a writer important; after all that is not an index to an aspect of life which confers fundamental insight. In the way of reading, I must not omit to add that I re-read *Evelina* and found it quite enchanting; and a volume of Emerson's essays containing "The American Scholar." I say frankly that I do not think there are five men living today who could write its equal in vigour and persuasive incisiveness. It really is one of the most moving things I have read in many a day.

I have also bought one or two nice things. The best was a set of the *Archives curieuses* of Cimber which contains hundreds of otherwise inaccessible French pamphlets 1600-1789. It is in 16 volumes and I paid a shilling a volume for it. Then S. Mercier's *Tableau de Paris* which I am reading in bed and finding quite thrilling. The nearest equivalent I can think of is that book *Middletown* which you may have seen. And I was fortunate enough to pick up a volume of tracts containing half a dozen of the treatises on Law Reform. I have always meant to do a paper on that and this volume would make it a pleasant task for some occasion when I am on holiday in the country.

Other news, I think, there is none. I have finished all the work on my little book about liberty³ even down to choosing the binding and I hope it will go off to you in a fortnight. You know what affectionate greetings it will bring.

My love to you.

Ever devotedly yours, H. J. L.

¹ Laski reviewed Raymond Postgate's *That Devil Wilkes* (1929) in 9 *The Labour Magazine* 42 (May 1930).

² Presumably Percy Mansell Jones, *Tradition and Barbarism: a Survey of Antirromanticism in France* (1930).

³ *Liberty in the Modern State* (1930).

Devon Lodge, 19.IV.30

My dear Justice: A gloriously quiet week to record in which only one external event has happened. I went on Monday to hear Snowden introduce the Budget of which the essential feature was a small but (I think) inevitable increase in the income-tax. I wish you could have seen the House. It was packed like a sardine-tin, with a hum of eager expectancy the like of which one rarely sees as possible. The rich members sat as tho' they were going to hear sentence of death. The Labour people were like hounds in leash ready to dash into cheers at the slightest provocation. And the production of anger, sorrow, temper at a change which I can best express by saying that I shall pay about one hundred dollars more a year was, to me, quite amazing. I put the reflexion that I cannot understand why men are so anxious to die for the State and so angry if they are asked to give money to it, even for objects they know to be essential. Churchill, for instance, spoke to me in the lobby like a man who has heard that London has fallen. A young Tory said to me that four years more of this would ruin the empire. And all I heard was a rather dull and careful speech, with nothing dramatic in it, which made a difference of perhaps three per cent to the expenditure of anyone there with a thousand a year. Truly Madison was right when he said that the only durable source of faction is property. I asked Churchill, if he thought of taxation as a voluntary offering by the citizen to objects he felt inclined individually to support; certainly that was his attitude. Lady Astor, who is said to have a million dollars a year, was acting like a woman who has just heard that a defaulting solicitor has run off with all her money.

One other thing may amuse you. I had a visit from a clever German professor, Palyi of Berlin,¹ who has just returned from six months in American universities. He put Chicago easily first, then Columbia, then Harvard; the last disappointed him as he thought the humanities in the college at a low ebb. But of people he met he put Morris Cohen and Felix easily first, then an economist named Knight of Chicago,² then Dewey, then McIlwain; pretty good taste, I think. He was very critical of Pound, whose plans for the law-school were, he said, like Ford explaining the programme of a new factory, and whose ideas had not changed since the papers he wrote before the war. Of Wigmore he spoke with contempt. He had learning, but no commonsense. But by America as a whole, with much he disliked, he was thrilled. Every day he said, you felt the pulse of life in its veins. Every day, you felt that men were prepared to experi-

¹ *Supra*, p. 877.

² Frank Hyneman Knight (1885-) had been Professor of Economics at Chicago since 1928.

ment and discover. I wish you could have heard him insist that *Babbitt* was true, and *Main Street* and all the critics of the new schools and that yet above it all no one could fail to feel that great events were being prepared, that one was in the midst of a potential Renaissance. I sat thrilled, and about seventy per cent convinced. But I would have made my shadows a little darker than his, and been a little more dubious than he as to whether the mere expectation of genius will, of itself, provoke its arrival. But he was right about Felix and Morris Cohen — obviously a man of discernment.

I have read much these last days, but mostly the 17th century. At the moment, I am in the midst of an amusing and revealing literature, the imaginary voyages of the 17th century where people sought to criticise existing institutions by pretending to explain what they had seen elsewhere. It isn't exciting, except that it shows pretty obviously one of the vital sources of political romanticism, how profoundly the discoveries affected human imagination and how diseased was the society which issued inevitably in 1789. And I would like to write a little paper on the psychical effects of America before 1700, there is much to be said on that; how the reaction of what Europe thought America was sent out the immigrant with ideals which moulded American institutions themselves and made 1776 ultimately essential to the satisfaction of the human spirit. Then I have read the manifesto of that new humanism of which I gather Irving Babbitt is the high priest.³ I have asked *Harper's* to let me write about it, and I hope they will, for it seemed to me even sillier than most religions. Why that type of cold, aesthetic renunciation, (at a level of \$5000 and up) should have any meaning for a factory civilisation I cannot imagine. And its humourless complacency, its plea for a self-chosen aristocracy, its sense of a high mission not open to ordinary men, its belief that it has rewon classic beauty, all this makes me a little sick. Incidentally, I am amused at its enthusiasm for French 17th century classicism. Apart from Corneille, La Fontaine and Racine, I doubt whether there was a single French poet of importance until the Romantic movement of the nineteenth century. There is not one great piece of political thinking, and the one great philosophic effort, Descartes, is, in a sense, the fount of romanticism by its insistence upon the validity of *my* experience as the sole source of my knowledge. These pale little prigs of professors in Princeton and Harvard and Virginia need a douche of cold water to make them use their minds seriously.

³ Presumably *Humanism and America* (Norman Foerster, ed., 1930). The volume included "Humanism: an Essay at Definition," by Professor Irving Babbitt (1865-1933) of Harvard. *Harper's* published no essay on this subject by Laski.

I have bought nothing since I got back from Paris, except a rather nice Spinoza in four volumes; and the letters are fascinating. I never, fool that I am, read them before.

Our united love to you. Keep well and take my new little book as evidence that you are never out of my thoughts.

Ever affectionately yours, H. J. L.

Devon Lodge, 26.IV.30

My dear Justice: I have felt almost on the way to you this week, for I have been busy arranging with Yale the courses I am to teach there next year, and I have got a real thrill out of it. Otherwise the time has been quiet and very pleasant: a little writing, much reading, and a jolly dinner. By the way, there will go off to you next Thursday a copy of my little book on Liberty. About Chapters I and III I expect only interstitial agreement from you; but on Chapter II I hope you will be my full compurgator.¹ What is really important is that you should feel that the book is, above all, the expression of an affection that only grows more full with the years.

First my dinner party. It was at Downing Street to meet some literary gents, and it so happened that it occurred on the day of the poet laureate's death.² Now three of them might well have thought themselves not ineligible for the post, and they did what you once described Henry Van Dyke as doing — they strutted sitting. When one of them observed that the P.M. called me by my first name, he changed from complete ignorance of my presence to an almost pathetic agreement with every word I said. Ramsay spoke warmly of an article of mine; the poet spoke of it with ecstasy. Ramsay asked the source of a quotation which I supplied (some famous lines from Blake); the poet praised my marvellous memory. So it went on. Then, bashfully, another of them raised the question of who ought to succeed Bridges. Names were suggested and the P.M. asked my view. I spoke strongly in favour of abolishing the post as a stupid one and J.R.M. was obviously moved by what I said. I wish you could have seen the poet's face. He made a savage little oration to the effect that to destroy a tradition was like the ruin of a beautiful old building, that he was sure the P.M. did not share my vandalism and so on. I have never seen a man so embody hate. In fact Snowden said to me as we left, "Laski,

¹ In the first chapter of *Liberty in the Modern State* (1930) Laski emphasized his familiar pluralistic thesis, acknowledging frankly that his was a doctrine of "contingent anarchy." The second chapter was a broad defense of libertarianism in matters of belief and the expression of belief. The third and final chapter, "Liberty and Social Power," urged that liberty can thrive only in a society in which there is equality.

² Robert Bridges (1844–1930) had been appointed Poet Laureate in 1913.

if I were you, I would ask for police protection from that fellow until MacDonald has found his poet." The whole show was one of the very funniest things I have ever witnessed.

In the way of reading, there is not much to record. A very charming book on Montaigne by Lanson, and a quite incredible book on Richelieu by Belloc. The latter makes vast statements which are only equalled by the complete absence of evidence in their support. It is brilliantly written; but what can one make of a fellow who says with all seriousness that Oliver Cromwell's work was, of course, facilitated by his family connections! Then a very interesting book on the origins of the Romantic movement by Seillière — a good deal of which he traces back to Mme. Guyon and the Molinist Mystics of the 17th century.³ I think his way of approach exaggerated; but there is much of real value in the idea and in the things for which it can be used. Then the autobiography of Wilamowitz-Moellendorf, the great Grecian, a most charming book. If this translation is available in Washington, I do pray you to read it. You will enjoy every word of it, for the inside of the scholar has rarely been better described, and the old man has a sweetness and light which are very moving indeed. I read, also, a volume sent to me of statements of their faith by contemporary American philosophers — all very solemn and portentous, but lit up by a superb piece of eloquence by Morris Cohen — one of the very best things he has ever done.⁴ Then a great deal of Blake, some of it quite unintelligible to me, but now and again a flash of supreme insight with the power to light up as the lightning shows up the inner beauties of a dark cave. And a volume called *The Sacred Wood* by T. S. Eliot, very clever, but parts of which made me want to shriek. The sentence e.g. "of all modern critics, perhaps Rémy de Gourmont most had the intelligence of Aristotle" either displays a complete inability to make judgments, or else a complete ignorance of Aristotle. R. de G. had doubtless a great amount of scattered and esoteric information, but Aristotle had an ability to drive facts into a system which people like de Gourmont do not even know can exist. If that is Eliot at his best, I think he lacks real balance of mind and I should guess him to be the high-priest of a coterie really outside the main stream that matters.

I have bought one or two pretty things — the nicest, I think, a fine copy of Molesworth's *Hobbes* in nobly bound volumes such as the old gentleman deserved. Did I, by the way, tell you that my set of Bentham

³To which of the many works of Ernest Seillière on the history of romanticism Laski referred is not certain; most probably it was to *Mme. Guyon et Fénelon, précurseurs de Rousseau* (1918).

⁴*Contemporary American Philosophy* (Adams and Montague, eds., 2 vols., 1930). Morris Cohen's essay was "The Faith of a Logician." Santayana contributed an essay, "A Brief History of My Opinions" (vol. 2, p. 239).

belonged to old Kohler the Hegelian jurist. His card tumbled out of the volumes the other day. Then I got a very nice Suarez *De Legibus* which I had long coveted and an admirable Vasquez. One day I hope a sensible university will ask me to give some really well-paid lectures on the 16th century Spanish jurist-theologians for they were great men and deserve commemoration.

Rummaging in my desk today I found this and send it along.⁵ Evidently Diana had put it there a month ago for me to enclose and I had failed to notice it. My neglect is inexcusable but I send it now. I think she meant it for a birthday letter.

Our love to you as always. Keep well and strong.

Ever affectionately yours, H. J. L.

May 12, 1930

My dear Laski: You write books faster than I can read them. *The Dangers of Obedience*, I suppose, is ancient history to you by this time. I finished it a few days ago. I readmired the Rousseau and Machiavelli and believed without adequate knowledge what you say about foundations etc.¹ I always have viewed them with suspicion and many years ago when Dillon² sent me a speech accepting one of Carnegie's gifts wrote to him that *prima facie* a man who used his power to divert a considerable fund from the competition of the market was an enemy of his kind. You optimists tacitly postulate a dictator embodying your conception of what is best for the world. My only criterion is the *de facto* equilibrium of social desires. The first half of this is intended only for insult — in the hope of giving pain. What I put as an assertion is hardly more than a surmise. Of course as you know I have but partial sympathy with your equality business. This morning comes *The Socialist Tradition in the French Revolution*³ — which I shall gobble before I sleep. It looks thrilling — to use your word. Yesterday I was notified of the sending of *Liberty in the Modern State* — not yet received. You keep me busy in my spare moments.

Also some ripping letters from you — the last enclosing one from my

⁵ The enclosure, evidently a note from Laski's daughter, is missing.

¹ In his essay "Foundations, Universities, and Research," Laski expressed much skepticism concerning the wisdom and fruitfulness of such enterprises in research as those fostered and directed by the large foundations and councils of social scientists.

² *Supra*, p. 301.

³ The lecture, originally delivered at King's College, London, was first published as a pamphlet by the Fabian Society and was later republished in *The Social and Political Ideas of Some Representative Thinkers of the Revolutionary Era* (Hearnshaw, ed., 1931).

Supreme Court of the United States,

Justice's Chambers. May 12/1930

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You would soon find
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Holmes to Laski, May 12, 1930

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I hope - It looks thrilling - to see your words. Yesterday
I was notified of the landing of February in
the modern state - not yet received. You keep me
busy in my spare moments.

Also. Some exciting letters from you. The last enclosing
one from my / sister & Randolph. Please give her my
love. If I can't meet as well as she does I should answer
her directly - but I am instructed that Adelle Weston
is needed for my photography. My brethren habitually proper
inability to read my script, I am delighted with your post
and the handwriting. I rather incline to agree with you, but
the inhibition may be dropped. I hardly believe that it
will be. Your affection in the Indian tip in another
letter has my heartfelt Concern. (I don't say that)
I pay my tax bills more readily than anything. The whole
thing is one a step & get Civilized directly for
it. I have avoided sailing at the discretion of other
people to dodge or what to avoid the government
out of order when they come out there. I remember in

foster granddaughter. Please give her my love. If I could write as well as she does I should answer her directly — but I am instructed that adult education is needed for my chirography. My brethren habitually profess inability to read my script. I am delighted with your poets and the Laureateship. I rather incline to agree with you, that the institution might be dropped. I hardly believe that it will be. Your reflections on the income tax in another letter have my heartiest concurrence. I always say that I pay my tax bills more readily than any others — for whether the money is well or ill spent I get civilized society for it. I have wondered similarly as to readiness of otherwise honest people to dodge or indeed to swindle the government out of duties when they come into port. I remember a classmate of mine, a comeouter, who probably thought himself a good example of the upward and onward, telling us with glee how he had defrauded the revenue coming into Boston. (We were on the same boat.) It made me gasp. Then I was more than interested by the German professor who had been sizing up America.

Apropos of the new humanism there was an article by Edmund Wilson in the *New Republic*⁴ that I should think embodied your views. I do not know these seeming prigs — but I read the chaff and abuse of them with pleasure. Your “pale little prigs of professors” is A-1. I am ignorant as I say, but I propel them from my inner consciousness. I stop my comments to say that since the last sentence my secretary and I (with the faithful Charley who has driven me for more than a quarter of a century) have motored through the Soldier’s Home and back by a *circumbendibus* through Rock Creek Park. The locusts are in bloom and the peonies are masses of perfumed purple — now turning a little with age. The weather is a little trying to me. But everything is most beautiful — *per quod*, reflecting that I had done nothing except take air, I said to my lad the last achievement is to enjoy without accomplishment. I find it hard.

My secretary has just telephoned to the Congressional Library to see if we can [have] L. Pearsall Smith’s *Four Words* — that you mentioned. My opinions — only two rather trifling ones, but I suppose the last for this term⁵ — have been written and approved — and I am for the moment up with the *certioraris*.

Berths to Boston for the night of June 4 bespoke the whole crowd — the servants going up under my wing. It looks like the approach of breathing time — though there will be big mailbags of *certioraris* during the summer if I am there to receive them, as looks likely at this writing. Now I turn to some of the chores that are always on hand to be done.

Ever affectionately yours, O. W. Holmes

⁴ “Notes on Babbitt and More,” 62 *New Republic* 115 (March 19, 1930).

⁵ *Eliason v. Wilborn*, 281 U.S. 457; *Barker Painting Co. v. Local No. 734*, *id.* 462 (May 19, 1930).

Devon Lodge, 10.V.30

My dear Justice: It is, I think, a fortnight since I wrote last; and it has been a very busy time. First, all the agonies connected with a new term; then a long and difficult hearing in the Industrial Court; then a most difficult job for Sankey which I thought might take an evening and, in fact, took four days of worried drafting; and a meeting in Oxford of the Political Science Club. This last was very funny. Barker ought to have come to read a paper on the "Inherent Rights of Churches." At the last moment he was detained, and A. J. Carlyle the historian performed instead. He began at about 9:15 and at 10:30 when he stopped for discussion he was almost on the verge of the Council of Nicaea. Then Graham Wallas spoke, and no one had the remotest idea of what he was saying though he was very decisive and even passionate. Then a law don from Cambridge propounded the theory that a church is a club and to be regarded in the same way. This provoked a mild little clerical don to say that the head of his Church was Christ Jesus our Lord and he would not have it insulted by comparison with so low a thing as a club. Finally I suggested that the inherent rights of a church are just those claims it makes for which at any given moment its members are prepared to die. This pleased Wallas who could not believe that any churchmen would die for any belief, and it thrilled the mild clerical don (he had a face just like a moon) who believed that all churchmen will die for all beliefs. Each took me aside and thanked me for exposing the other's nonsense. I thought silence the better part, and did not insist upon my implications.

For your private ear, I must tell you about the poet laureate. The P.M. had decided on Masfield from the outset; but he had to let a decent interval elapse. The most incredible people wrote to him to emphasise their claims. A lady poet wrote to exhort him to appoint her in the name of woman's rights. John Drinkwater wrote to say that the P.M. might like to know that he had just joined (the day after Bridges' death) the Labour Party. Another gent sent him three specimen odes: 1. funeral; 2. nuptial; 3. successful royal confinement to show him how he would do the thing if appointed. Another poet wrote offering, if given the post, to do a philosophic-poetic account of the Labour programme. And a well-known man of letters who is about the best Tory-snob in London wrote to say that his advice was at the P.M.'s disposal as he supposed that this was a realm in which the P.M. had no experience. This gent., I may add, when he saw the appointment wrote to congratulate MacDonald and added that it was the name he himself would have suggested. As MacD. said to me he probably wrote to Masfield claiming credit for the appointment. It is a funny world, about which one really cannot find one's way without a sense of humour.

I have not had time to do much reading. But I have enjoyed going through two volumes of contemporary American philosophers, in which I thought the essays of Cohen and Santayana quite superlative — especially the former. And I liked an American novel by Edna Ferber called *Cimarron* which seemed to my ignorance to have caught the spirit of the South-West in the 'seventies and the 'eighties. Also I read an introduction to philosophy by J. Maritain, the leader of the neo-Thomists in France. I frankly did not recognise poor S. Thomas. He was mild and reasonable and Aristotelian, concerned, above all, to make a great unified system of knowledge. This gent. declares that the beginning of wisdom is to realise that philosophy and theology have no connection with each other, that the truths of theology are not capable of analysis in philosophic terms. I cannot imagine what poor old Aquinas would have felt about this. I think he might have said that if theology is reduced to these straight, it is much better to leave the Church.

I have picked up one treasure from the S. of France, a little book by F. Davenne called *Politique du temps* (1650) which is the one effective plea against monarchy produced in the Fronde. Only two other copies are known and none in England. Mine is in superb condition, bound in contemporary red morocco and quite exquisitely tooled. I feel as happy as a sandboy over it and I paid only three hundred francs for it. I feared I might have to go to Lyons, where the nearest copy is, merely to read the book. Now I have it by the bedside and gloat over its beauty.

You must hear of Lord Birkenhead's dilemma. He has just published a Utopia which has had vast publicity. I read it and found two passages taken verbatim from Haldane's *Daedalus*. I wrote to the latter who, on careful comparison, has found forty-four passages of this kind and round this curious resemblance has written a charming article suggesting that his book and B's are probably based on a "Q" like Mark and Luke since it is impossible to suppose that Lord B. would plagiarise from a humble professor of bio-chemistry.¹ We are waiting eagerly for Lord B's reply. It is a warning to great men not, like him, to rely on ghosts but to write their own books if they *must* write books.

Our love to you as always.

Yours ever affectionately, H. J. L.

Sunday evening, May 18, 1930

My dear Laski: In the great steeple chase after your pen I now have read the latest — *Liberty in the Modern State* — and as it did not bear your

¹ The comments of J. B. S. Haldane on Lord Birkenhead's *The World in 2030 A.D.* (1930) are found in his essay "Lord Birkenhead Improves his Mind," in *A Banned Broadcast and Other Essays* (1946), 13.

inscription I have written my name "from H.J.L." with the date, that I might claim all the honor to which I am entitled. You rightly divined that chapter 2 (I think it is) as to Freedom of Thought commanded not **only** my sympathy but my admiration. I may remark in passing that I think the argument for free speech, devoutly as I believe in it, is not entirely easy. In other cases, *e.g.* vaccination, when we know that we have the power, want the end, and are convinced of the efficacy of the means we don't hesitate very much over even conscientious scruples. Or at least I shouldn't. But as you leave worship free, when you become God, and dispose of large futures on formulas that I think fishy, I will hold my obeisance — can it be that I am in an unreasonably rebarbative condition? F. Pollock the other day, and again recurring to it, thinks that *The Testament of Beauty* by the late Laureate is a great philosophical poem. I admit that I read it under unfavorable conditions, but it seems to me the cosmos arranged to suit polite English taste, and by no means to be mentioned with Lucretius as it is by F. P. *Inter alia* I have read *The New Evolution-Zoogenesis* by Austin H. Clark, who married a dear little cousin of mine and in whom I therefore am interested. He like my (wife's) nephew Gerrit Miller is a very distinguished scientific man, rejects all missing links. He thinks there is not a particle of evidence that the great types of animal life did not start as distinct as they are now, and believes that the differentiation started with the primordial cell. I am curious to see how the book will be taken by the scientific world. The English I believe are pretty well committed to their Piltdown bones &c but I guess that Miller had a preponderant opinion on his side.

Also I read the little pamphlet on *Four Words* with pleasure — and have gone through a work by many authors dealing with man and the universe,¹ from the chance of other inhabited spheres to the details of the human body and the outlook for the future, at every point coming on mystery at the crucial point — incidentally one of those odiously heavy American books that contrast so unfavorably with the run of English ones. I suppose the paper is loaded with clay or chalk or God knows what.

This is all for the moment. We deliver some opinions tomorrow — but argument is over &c. I have bought tickets for the family for Boston the night of June 4. I wish I were going to see you. I shall drive through Rockport and glow and sigh.

Affectionately yours, O. W. Holmes

¹ Presumably *Human Biology and Racial Welfare* (Cowdry, ed., 1930), *supra*, p. 1239.

Devon Lodge, 18.V.30

My dear Justice: A busy week, made pleasant by a hurried visit to Edinburgh. I went there to talk to a vast concourse of business men, and after the talk walked round the old bookshops (they are very good) in happy ecstasy. I bought a number of nice things, including a pretty Suarez and an excellent copy of Mercier's *Tableau de Paris*. Also I went over Holyrood which has a kind of dismal magnificence about it not without its sense of awe. I was amused by meeting one of those local antiquarians who are obsessed by one small point. This was a thick-burred Scotsman to whom the world was the problems of Mary Stuart, and in that world the fact (to which he had devoted years of effort) that the murder of Rizzio¹ can only be accounted for by the supposition that he was the real father of James I. He was quite indescribably funny about it. He seized upon my chance remark that no one could disprove it, as evidence of sympathy and offered (1) to lend me his dossier of proof (2) to have me for a week-end to show me his evidence. I did not like to say that so far as I was concerned it would not move me even if the Holy Ghost was the father. He also warned me against X, a local professor of history as a man full of prejudice and quite insensible to evidence. At dinner I met X, a robust fellow of bluff commonsense who asked me if I knew the antiquary and his mad theories about Rizzio. He then proceeded to explain that the antiquary has given some forty lectures on his hobby to local archaeological societies, and that Scottish historians live in terror of his appearance at a meeting, for if the subject of discussion is, say, the Romans and the Picts, he will have it round to Mary and Rizzio within an hour of his appearance. He told me that about thirty years' ago the antiquary went to Cambridge to see Acton and persuade him to get a committee appointed to enquire into the legitimacy of James I. Acton, with a gentle smile, said that after two hundred years, he thought that a statute of limitations ought to protect frail beauty.

Of other things, there is less to tell. I went to lunch to the P.M. and met there a remarkable Rumanian who was an ex-minister and a specialist in omniscience. He listened to MacDonald politely for ten minutes and then launched out. J.R.M. said a word about peace. He spoke for ten minutes with wild eye and fervid gesture. Snowden muttered something about hopes of Rumanian prosperity: the gent. proceeded to an analysis of Rumanian resources which was doubtless admirable, but a little confusing in a jargon of French, German and crypto-English. I then asked him (I admit incautiously) if he knew Jorga the Rumanian histo-

¹ David Rizzio (1533? -1566), musician who, turning statesman, became private foreign secretary to Mary, Queen of Scots, and was ultimately murdered by the Earls of Morton and Lindsay.

rian,² and that let hell loose. He explained not merely that Jorga was incompetent and stupid; he was under grave suspicion as a forger of documents, a low careerist, a moneymaker, in the pay of evil politicians, of unpleasant manners, greedy and guilty of crimes he would not say in so eminent a company. MacDonald was nearly ill with suppressed laughter, Snowden had to leave the room, and I, who had, now and again, to try and find words to express his meaning to himself, was in a state of collapse. When we left, he detained me on the doorstep of Downing Street for twenty minutes with a wild harangue of how Jorga had been given a professorship which he, (the ex-minister) should have had. He was so passionate that the police gathered round for fear he meant mischief. Now comes the climax of my story. One of my students is a Rumanian; and on Friday he brought me a message to say that the ex-minister, when I spoke of Jorga, had misunderstood the name; he thought I had said someone else to whom only his observations applied. I could regard Jorga as a light of Rumania. Now is not this a really superb story?

Felix has worried me a little by sending me on a letter from Wu asking to be invited to give six lectures on legal philosophy to the university here. I have had to write and ask Felix to explain that the lawyers here, who have never heard of him, might ask him to lecture on China, but can hardly risk the other. I hope Wigmore & Co. are not spoiling him out there. His letter to Felix was almost like a royal command. He used always to sound so charming and modest that I was a little distressed by the peremptory character of his requirements. Have you seen him since he got to America? And, between ourselves, do you think that what he has to say on legal philosophy is really important? I thought his book of essays the expression of a rare spirit, but no more. I do not want to disappoint him. But, also, I do not want to recommend him to the lawyers and leave them feeling they have wasted time and money in getting him here.

In the way of reading, I have not very much to report. I do strongly recommend a novel, *Cécile*, by F. L. Lucas, a story of the France of Turgot which has a delicate and restrained beauty you will, I think, relish. And I have read an old book of Santayana's *Character and Opinion in the U.S.* which seemed to me superb, even in its omissions and exaggerations, and as a portrait of James and Royce, quite unsurpassed. Also a volume of pamphlets of [two words illegible] called the *Elizabethan Underworld*, edited by a young colleague of mine named Judges, which is just like a picture of Chicago in miniature.

Our love to you and the very best of good wishes. You are, I suppose, within a fortnight of Beverly? *Ever affectionately yours, H. J. L.*

² Nicola Jorga (1871-1940), historian, statesman, and critic; professor at Bucharest; author, *inter alia*, of *The Byzantine Empire* (Powles, tr., 1907), and *A History of Roumania* (McCabe, tr., 1925).

May 28, 1930

My dear Laski: A letter has just come from you after another not answered that arrived on the heels of one that I had sent to you. I have been and am so busy that I still should wait but for the inquiry about Wu, which needs immediate attention. I am disturbed, almost distressed by what you say. While he was with Wigmore he sent me some sort of autobiographical sketch, I think, written in a tone that made me uneasy and I wrote to him about it. But he is so ready to be humble that he disarmed me at once. I have done what I could to impress him with the belief that philosophizing about the law does not amount to much until one has soaked in the details — and have not disguised my fear that he has chosen the primrose path in coming here at this time. He has an instinct for philosophy and has read a good deal — but I wish that he could wait until he had seen more of life. I doubt if he yet distinguishes between what real contribution he may have to make and the obvious, possibly expressed in a somewhat new form. I hate to throw cold water on anything that he wants — but I should not dare to say confidently that he could make any fundamental revelation. Let me emphasize that I don't believe that the swelling tone that you noted is serious. I guess that Wu is as ready to despair as to assume a throne. I have seen him for a short time only and then mainly in company and I think that he is the same dear chap as always.

I have only had half an hour after supper (I don't call it dinner any longer as the only scrap of meat that I eat comes at 1:30) to read. I have been reading unwillingly but with a good deal of interest 2 volumes sent to me by Owen Wister — a life of LaFayette by Brand Whitlock — my notion of LaFayette, derived I suppose from Carlyle, had not been reverential. But the old boy did stick to his convictions so magnificently, never yielding an inch for royalty, mob, prison, or Bonaparte, that I feel a deep respect — and that although he when young at least had incredible vanity and cared more for the applause of the crowd than I should think possible for a wise man. He may not have been wise, but he was a gallant gentleman. As I read again about the time of the Terror I was reinforced in my feeling that the first of the primates was a good deal like the rest of them and as subject today as ever to herd movements. There is a good deal of sadness in old age, even if one has gaiety on top and an interest in the day. I was feeling finished when I got a letter from the ever encouraging Felix cracking up a dissent from an opinion of the majority by McReynolds, that put heart into me.¹ I was amused by McR.'s opening remark that all "with unclouded minds" could see &c. But to my regret I believe the phrase does not appear in the print. He readily lapses

¹ *Baldwin v. Missouri*, 281 U.S. 586, 595 (May 26, 1930).

into a certain arrogance of tone — yet I believe him to be a man of feeling with a disguised tender side.

I want to run on but I must stop leaving many things untouched but always,
Yours affectionately, O. W. Holmes

Devon Lodge, 30.V.30

My dear Justice: A delight of a letter from you has lightened up a heavy fortnight. I have had a journey to Newcastle to do an arbitration there; a big case in the Industrial Court; two difficult meetings of the Donoughmore Committee; and a mass of university business such as the election of new professors. And on Saturday I must give a presidential address to a vast concourse and on Monday give evidence before a government committee. It is all very exhilarating, even useful; but it takes time.

I have seen some of our friends. Redlich came to dinner, with good news of you and Felix, and so won my heart. He is a brilliant fellow, a little bit the intellectual *flâneur*, like so many Viennese, wide, perhaps, rather than profound, but extraordinarily stimulating. He tickled me immensely with his picture of Pound exhausting 3 acting deans during the year at the Law School so that in the end, as always, they fell back on Beale; and his picture of Felix as the counsellor of all the best students was one in which I rejoiced mightily. Then I met Lewis Einstein, as charming as can be. But I do hope he can find a definite piece of work to do. He is a little out at ends, too rich to *need* to find anything, and too strange, without a routine, to want to pin himself down. But I think he is rather lonely, and not too interested in the environment of Mayfair. He ought to be persuaded into embarking on a big book; and (I whisper to you) he ought not to be allowed to lose touch with America. If you meet one of the mighty princes who have lectureships to bestow I think it would do him a world of good to be asked to give half a dozen lectures at Princeton or Harvard or Chicago. I also have had a good dinner with the Foreign Secretary.¹ He has a mighty opinion of Dwight Morrow. Stimson he found of the highest moral quality, but almost painfully slow in negotiation. He spoke most warmly of George Rublee whom our lawyers thought the best legal mind of all those you sent over. He told me one story that will amuse you. The minister of one of the tiny powers (S. America) over here was so encumbered by the failure of his government to send a remittance that he could not get the grocer and the butcher to send in new supplies; so the Foreign Office had to help him with a personal loan. This so moved him that he presented the Foreign Secretary with his signed photograph; and then, thinking that the per-

¹ Arthur Henderson.

manent secretary should have something, but, of course, a lesser gift, gave the latter a photograph of his legation. Isn't that exquisite punctilio? The F.S. gave me a very interesting little job to do, the writing of an estimate of the candidates next September for the International Court. *Inter alios*, I have very strongly urged the govt. here to vote for Redlich who will, I believe, be nominated by Czecho-Slovakia.² It would be an enormous advantage to have a man on the Court who is intimately acquainted with both the Common Law and Continental systems. Did I, by the way, say how much I liked the admirable piece he wrote about you in the *Neue Freie Presse*?³ And did I tell you that Leslie Scott wrote me a most charming letter about that little article of mine in *Harper's*? I wish I had thought of sending it on to you.

In the way of books, some nice things and a misfortune. The nice things are (1) a beautiful copy, "with wide margins" as Ingram Bywater used to say, of Davenne's important attack on despotism, a book of real value to me as being the first critical attempt in France to answer Hobbes. (2) A nice, modern edition of Suarez *De Legibus* which I have been re-reading and really enjoying. When I write that introduction to the philosophy of law which is one of my dreams those Spaniards of the 16th century, especially Suarez and Soto, will, for the first time, have real justice done to them by a writer of the English tradition. (3) A most amusing book of Holbach's *Le tableau des saints*, a Voltairian examination of the saints' claim to sainthood done with amazing verve and gusto. He has a delightful story of what decided the Canon at the Council of Nicaea. All the books were placed on the altar and the assembled fathers prayed to God to make a choice. There was a clap of thunder and the uncanonical books rolled off the altar. Isn't that really adorable? (4) My tragedy is that the first copy in years of Maitland's *Bracton's Note Book* came up at auction in the library of the late Joyce, J. I bid up to fifteen pounds, but it brought twenty-six, going to a Western American law school which I hope will use it well! Funny that it should be so rare and that the Cambridge Press should refuse to print it! At the same sale a first edition of Blackstone sold for £75; the old gentleman must be in high fettle in heaven. I can see him thumbing his nose at Coke the first edition of whose *Institutes* only brought twenty pounds. At the same sale, also, five pages of the ms of *Pickwick* brought over a thousand pounds!

Of reading, there isn't much to tell. I must mention a quite charming life of Leigh Hunt, beautifully written, by the poet Edmund Blunden,

* At the League's second general election of Judges, on September 25, 1930, Josef Redlich was elected a Deputy Judge of the World Court.

³ "Oliver Wendell Holmes, der grosse Richter Amerikas," *Neue Freie Presse* (Vienna), April 20, 1930.

which, I think, finally disposes of the Harold Skimpole legend,⁴ and an attractive little book, though elementary, on the British Constitution by Maurice Amos whom you know. Also a discursive essay by Walter de la Mare called *Desert Islands* which I urge you to read for its mass of curious knowledge in the notes. I bought in the train (one should always share good things) a to me previously unknown P. G. Woodhouse called *Jill the Reckless* which I beg and pray you to get at once. I laughed over it in the carriage until the other people really suspected me of lunacy. There is one scene in the theatre when Jill's uncle thinks of proposing to the lady millionaire to achieve Jill's fortunes which I can only describe as a supreme achievement.

Well. This will come to you amid granite rocks and barberry bushes and the house built of newspapers. Please salute Rockport for me; it has not lost its place in my heart. But, above all, be assured that there is no day when I do not think of you with love.

Ever affectionately yours, H. J. L.

Devon Lodge, 7.VI.30

My dear Justice: I hope you are well settled at Beverly Farms, and that the weather is propitious. I wish I could drop in for talk.

The week has been a busy one. Dinner of the Rationalists of whom, for the moment, I am president. Jack Haldane made a brilliant speech there on the futility of believing that religion and science have compatible interests.¹ Then a long jaw with Redlich just before he left. He was in great form and embarked on generalisations which left me dizzy. Did I tell you that he has been nominated as a candidate for the International Court? It would be a joy to see him elected. Then a dinner with Sir Harold Morris, the president of the Industrial Court² — mostly lawyers, and very good company. I call one story from the anthology which amused me. A solicitor hurrying off for the week-end tells his young clerk to write a stiff letter to X and get the costs that have been unpaid for a year. On the Monday, to his surprise, the money appears. He asks to see the letter which produces the miracle, and is shown the following: "Dear Sir, Unless we receive our costs by Monday morning next, we shall at once take such proceedings as will truly astonish you." I don't know where that lad is today, but I should like to bet that he is a millionaire.

⁴ Dickens had given to Harold Skimpole in *Bleak House* some of the characteristics of Leigh Hunt. Blunden dealt with the matter in the twenty-first chapter of his *Leigh Hunt* (1930).

¹ The address has not been identified.

² Sir Harold Morris (1876—) was President of the Industrial Court from 1926 to 1945.

Yesterday A. Flexner came to tea and we went through the ms of the book he is writing on American universities. He produced some marvelous things — especially the lady in Nebraska who produced a thesis for the Ph.D. in Home Economics on Bacteria in Men's Underclothes, and the course of lectures in Columbia on "catering in small country restaurants." What, after all, is a university for, if it cannot shed the light of science on contemporary problems. He told me one tale which I must repeat. He took a taxi in New York. In the block at 42nd St. the driver opened the door and said to him "Don't think much of this fellow Hughes whom they've made Chief Justice — good corporation lawyer, but no more." At 59th, he opened the door again "Now Brandeis, he's a fine man, wise as well as learned." Then silence until 110th Street when the final block produced "But I like old Holmes the best — a gentleman and a scholar with a nip in his words." Now what better testimonial than that could you wish — it beats my *Harper's* article simply hollow.

In the way of reading there are some things you must read. Item One, a novel called *April Fools* by Compton Mackenzie, one of the funniest things I have read in years. The clergyman in it is worthy of P. G. Wodehouse at his most ludicrous. When I say that he proposed to write a play called *Thomas* and that as the curtain rises a cock is to crow thrice, you will see that it is a side-splitter. Item two, a *Short History of France* by Charles Guignebert which is the best short and critical survey — rather like George Trevelyan on England — I have ever read. The discussion on early French civilisation is peculiarly attractive. Item three — Trotsky's *Autobiography*. This I beg you to read. Nothing even approaches it either as explanation of Russia, its strength and weakness, or as a great and dramatic narrative. The book pulsates with excitement and I know nothing of the kind in years that has moved me so much. I challenge anyone to read his account of the capture of Petrograd by the Bolsheviks without a thrill, or his description of the negotiations at Brest-Litovsk without a desire to cheer. And apart from certain correspondence I know nothing which makes one see so clearly what a great man Lenin was or how small are the *epigoni* who have usurped his position. Do, do, read it and feel that the grandeur of romance on the heroic scale has not yet gone out of the world. Lastly, I must mention Mencken's *Treatise on the Gods*, which, with some faults of taste and temper, seemed to me to express incisively and sensibly the case against organised supernaturalism of any kind.

I have bought nothing in the way of books except a dozen anti-Burke pamphlets of 1790. And the things I yearn for are getting incredibly expensive. There is a book of Edmond [*sic*] Villey on the sources of Montaigne which is *hors concours*.³ It is only 1906 — but a copy in the

³ See *supra*, p. 998.

latest catalogue from Paris was priced at fifty dollars; and a nice, but not too nice, folio of Molina in no special edition was the same price. I was amused, in the auction-room, to see first editions of Nat. Hawthorne go for forty and five pounds each, and a little notebook which G. Eliot used as a commonplace book brought over £200. On the other hand the general wisdom of popular judgment was, I think, shown by the fact that the ms. beautifully bound of one of Mrs. Humphrey Ward's novels, brought only fifteen shillings. Wouldn't Matthew Arnold have been delighted?

I am busy just now with a little booklet that is intended as a gift for the free-thinkers — a short history of religious toleration in England.⁴ It is great fun, and amusing to note how few people who have the reputation for reasonableness survive the test when you begin carefully to analyse what they said. I can find one person only in the Tudor period who thought that an atheist might be sincere. And I get convinced as I make notes that religion has been more harmful to civilisation than any other single factor in history. Even yet, merely on the legal side, it is astonishing how far toleration is from being complete.

Well — my love to you as always. Don't let either visitors or *certioraris* stand in the way of Trotsky and Compton Mackenzie.

Ever affectionately yours, H. J. L.

Beverly Farms, June 8, 1930

My dear Laski: It is a continual marvel to me how you find time to write to me such uniformly admirable and delightful letters when you have so much work to do. Two bodies perhaps can occupy the same place, but can you attend an arbitration, write a book and send off a letter all at once? Your letter met me here on my arrival yesterday evening — the best of welcomes — and I am wallowing in comfort, though the weather is somewhat chilly and misty and I am staying indoors hoping to dodge a cold. The journey on is somewhat upsetting. Actually I have had a day of almost leisure and my secretary has read to me (1) *The Show Girl and her Friends* and (2) *Conversations of a Chorus Girl* — by Roy McCardell — an author of whom I never heard outside of this house but whose two booklets I read every time that I come here. I prefer them to the works of more famous authors. Before I left I let off a dissent on what seems to me the abuse of the "due process of law" clause in the 14th Amendment, as to which I have just come on some notice in the *New Republic* which I enclose as they copy what I say.¹ I regret being called

⁴ If completed, the booklet has not been identified.

¹ 63 *New Republic* 82–83 (June 11, 1930). The comment was on Holmes's dissent in *Baldwin v. Missouri*, *supra*, p. 1253.

the dissenting Judge in the papers for I don't like to dissent. But if one does one can talk more freely than when he speaks for others as well as for himself. Resolutions by a committee are always flat unless they put themselves into the hands of one man. I suspect that McReynolds may regard me as a bird that befouls its own nest, although nothing could be farther from my wishes or intent. We are on excellent terms together, but our notions are different. So that's that.

Later — My secretary this evening has been reading to me what you will more approve, some of Birrell's *Obiter Dicta* — mighty good reading they are — but I haven't passed so idle a day since I can't remember when. One of the pleasures of age is that occasionally some old lady that one hasn't seen for fifty or it may be more years, up and writes to one. I have had several such letters — and the day before yesterday in Boston called on one of them. I should not have known her but had a mighty pleasant talk with a civilized woman who has seen the world from China to Venice (if not Peru) and just before I left had a note proposing a call from one with whom I walked when she was a charming little girl to whom I told stories and who sent me a book mark that I was able to tell her was still in Burke's *Works*. She is a grandmother and the mother of a Senator.² This drool that I am writing is better to go to sleep on than discourse on high themes — so I will go to bed now.

Ever your Affectionate O. W. H.

Beverly Farms, [Saturday] June 21, 1930

My dear Laski: Forgive this paper — it is so much more comfortable for writing than note paper and is the best that I can get here in a block. Obedient to your order I sent for and last night received Trotsky's *Autobiography* (off my beat, but I am reasonably obedient!). The Old Corner Bookstore did not have Compton Mackenzie's book and as somehow I doubted if I should find it as funny as you do I didn't press the order. At the same time I received Owen Wister's book about Roosevelt with some discourse on the people who used to get to the White House in his time including myself. I shall read that first, but it is easy doing. *Ad interim*, in my $\frac{3}{4}$ lazy and languid days my secretary has been reading aloud to me — some of the Restoration plays — Congreve and Van Brugh — rather rudimentary in their emotion, interest, and wit, with an absence of confidence between husband and wife that is surprising in our day, and I suppose stage rather than life. The Duke of Buckingham's *Rehearsal* seemed to me on a higher grade distinctly. He must have been

² Mrs. William Bayard Cutting, mother of Bronson Cutting (1888–1935), Senator from New Mexico.

a lively lad — to write that and run Lord Shrewsbury through.¹ As by-products — a book by Max Beerbohm, *Zuleika Dobson* — wit and good writing — but longer than the matter justified. Oscar Wilde's plays — mostly drool — but 2 or 3 good. One first class saying — a cynic — one who knows the price of everything and the value of nothing. And latterly Aug. Birrell's *Res Judicatae* — *Men Women and Books* — and now *Obiter Dicta*. They stand rereading well — but I had forgotten them. Why do you never mention him in these days? Have you cause to see him? He is a mighty pleasant embodiment of English discernment and prejudice — missing as I think the last word. It seems to me that there is a last spiritual touch that he cannot give, but a stout old Briton whom one respects. I spent some time on my friend Felix [*sic*] Warburg's account of the Federal Reserve System,² but it came hard to me because I do not understand the words or know the postulates. Yesterday Felix, Walter Lippmann and Judge Learned Hand came here to luncheon and gave me great pleasure. I said to them that the best thing I could do was to die. Everything has been so smiling to me this last year that I tremble, and fear that I shall do some damned thing that will put a fly into the ointment, but Hand replied, "All life is taking a risk. Go ahead and take it" — and I thought he was right. But still I tremble. I am writing hurriedly hoping to catch the presumed boat. I am a fool. I have been thinking that today was Friday and that if I posted this about 3 p.m. it could go on the morrow. Still as I go out in a few minutes to the p.o. I will send this off. I hate to have things waiting to be finished. Yesterday I had also a visit from Wu and another Chinaman — who proposed to name a prospective building in Shanghai for me and to use my name to invite subscriptions. I dissuaded the former and denied the latter, and at once was impressed by the good breeding of the East. They didn't tease or look sad. They accepted my veto, remained pleasant and didn't stay too long. I am easily tired in these days. At odd minutes I have reread some chapters of Einstein's *Tudor Ideals*. They seemed to me very good. They also had passed from my memory. It will be a shame if he doesn't settle down to some solid work. I have exhorted him to. I must go forth. My blessings on you — wonderful youth.

Affectionately yours, O. W. H.

My love to your family also — s.v.p.

¹ George Villiers (1628–1687), second Duke of Buckingham, stormy statesman and sportsman of the Restoration, in 1667 killed the Earl of Shrewsbury in a duel and gave the widowed Countess, his mistress, shelter under his hospitable roof.

² Paul M. Warburg, *The Federal Reserve System, Its Origin and Growth* (1930).

Devon Lodge, 15.VI.30

My dear Justice: A delightful letter from you; and some advice about Wu for which I was very grateful. I have written to Felix suggesting that Wu should think not of lecturing about jurisprudence, but about judicial reorganisation in China, which I imagine he really knows intimately. If he accepts, I will try and arrange that with the University.

The week has simply flown. I have been busy writing some memoranda for the P.M. about India — a ghastly problem of which the real essence is that we can't govern it and it really is not fit to govern itself. Then a jolly dinner here for Flexner who is a wise and able person. And much energy expended in preventing Felix from coming here to dip his fingers in the Zionist pie and create immense embarrassment. It seems to be one of Brandeis's blind spots not to see that when the British government has a commission of enquiry in Palestine not even Felix can get guarantees about policy until the commission has reported, and that to send him here just now, instead of when there is a document to discuss, would injure his prestige and waste his time.¹ And for either my sins or my virtues, which I don't know, I have had to accept the Deanship of the Faculty for the next three years.² Luckily it means little work and it gives me some pleasant patronage in advanced lectures which I hope to use by getting people like Geny and Kelsen and Kantorowicz to London. Then I could really say "*nunc dimittis*." Also I went to Hull to speak at the inauguration there of the new chair of politics. . . . I add that Hull, as a place, seemed to me nearer hell than any other town I have visited. Not a bookshop to be seen; and a public library with five times more fiction than all its other books put together.

In the way of reading, one or two amusing trifles first. (a) Arnold Bennett's diary. This is worth turning over if only to see what a first-rate man of letters observes. Food, hotels, the manner of the idle rich, the

¹The Shaw Commission which had been sent to Palestine to investigate outbreaks which had occurred in 1929 had issued its report in March 1930, recommending curtailment of Jewish immigration and new restrictions on the acquisition of lands by Jews. Immediate protest by Zionist leaders was a factor leading to the appointment of Sir John Hope Simpson as a Government Commissioner to investigate and report upon immigration and land problems. His Report (*Command Papers* #3686) was published in October 1930, simultaneously with the issuance of the Passfield White Paper (*Command Papers* #3692), a document which was bitterly criticized by the Zionists and others and which was substantially repudiated by MacDonald in a letter to Dr. Chaim Weizmann in February 1931.

²Evidently Laski did not assume the post. The Calendars of the University of London indicate that for the following three academic years Professor Eileen Power was Dean of the Faculty of Economics.

quality of transportation, the manners of cinema directors. He seems to want to produce an atmosphere of extreme sophistication. He hardly mentions reading a book. He refrains from any political comment, whatsoever. Now and again he gets rightly lyrical over a Brueghel or a Donatello. But he is to himself above all a man of the world who can show the rich clubman of Pall Mall that Arnold Bennett knows the dialect of Belgravia just as well as anyone else. It's a queer ambition! (b) An admirable detective story called *The Rope* by Philip MacDonald.³ One reader, at least, hopelessly baffled and full of admiration for the detective. (c) *The Jewish Religion* by Oesterley — the best analysis I have ever read of the stages of theological development in the Old Testament written with full knowledge of both the archaeological and the textual evidence. I thoroughly enjoyed it and felt that I had really learned a great deal. (d) Schweitzer, *The Quest of the Historical Jesus*, a brilliant history of New Testament criticism written from the standpoint of an eschatologist. It was full of interest, and though too pious in temper for a Voltairian like me it did make one feel acquainted with the debate. I add that I was struck by the great work done by amateurs in developing some of the big critical advances. (e) Finally I make a passionate complaint against you. Someone sent me from New York two volumes by Milt Gross — short sketches of East Side Jews. Why have you never told me of him? He is the biggest person since Mr. Dooley, and obviously of classical quality. I thought the insight and the humour really superb; and I have rarely enjoyed anyone so much. I assume you know him; if not then I pray you send for anything he has written by the next post. There is the best living American writer. We are very excited about our summer holidays. We have found a tiny place called Cochem on the Moselle, four hours from Berlin and eight from Munich. So I shall be able to have a month of rural peace coupled with visits to bookshops I have not seen for years. And I hope to get down to Vienna with luck and spend a few days there with Redlich. The hotel is built on the river, and the views seem to be a holiday in themselves.

Our love to you. If you do not know Gross — I bet you do — throw the *certioraris* in the fire and begin him at once. All judges should be made to read him, especially McReynolds!

Ever affectionately yours, Harold J. Laski

Beverly Farms, June 26, 1930

My dear Laski: Your letters are an education to poor old me — but if I tried to read all the books you exhort me to I should do nothing else — and already the first pile of *certioraris* looks at me from under the win-

* Presumably Philip MacDonald, *The Noose* (1930).

dow. Why did you make me take up that damned Trotsky? I have not got through his education yet. If I sought only entertainment I should not complain — but biography is off my beat because of time. If I studied affairs as every one ought you would be right, but I now limit myself to a fraction of life. You speak of two books by Milt Gross. I know only *Nize Baby* — I read and reread that to my wife and we roared over it. Probably it was accident that I didn't mention it though I should not have been sure that it would amuse you. I must enquire about the second work — but I think he should be read aloud to be fully enjoyed. Frankfurter and Mrs. are coming here in an hour or two to luncheon. Your letter opens several themes for converse. I have been seeing rather more of people than I quite like. Over an hour and a half of talk tires me — and although every call has been pleasant I sometimes have to pay for them by a fit of coughing at night. Evidently when I was young I didn't learn to use my voice in the right way, and I am paying for it now. Wister's *Roosevelt* took only the leisure of a couple of days and naturally was very interesting to me. Incidentally he is more flattering to me than I could have dreamed that he would be. I hear a rumor that the book has been withdrawn from sale on some apprehension of libel. I don't know whether the story is true. Also Frankfurter sent me Edith Hamilton, *The Greek Way* — some discernment — more rhetoric, it seemed to me. Generalizations based on the distinction between spirit and mind seem to me nebulous. As you see I have not read a great deal, even for me. For you it all would be a bagatelle. But I have slept more than I have for many a year — and am apt to interrupt the improving in that way. My heart is heavy at the thought that the *certioraris* must begin again. I am so glad to think of you in your vacation in the quiet little town with bookcounters within reach. My love to you all.

Affectionately yours, O. W. H.

Devon Lodge, 28.VI.30

My dear Justice: Since I wrote last, I have lived in a whirl of examination papers, and if there is a more dismal occupation, I certainly do not know it. Now I have emerged, bloody but unbowed. And there have been examinations for Ph.D.'s, testimonials for students in search of a job, boards to appoint new professors, and all the intolerable accompaniments of a dying academic year. At least, it is now over; the captains and kings have departed. But one or two items will amuse you. The Commemoration ceremony, with Earl Beauchamp,¹ the university chancellor, as the set piece. He arrives in great state, with a train-bearer, and begins the proceedings by getting mixed up with his garments and falling over

¹ William Lydon (1872–1938), seventh Earl Beauchamp, liberal politician and leader in London society; Chancellor of London University, 1929–1931.

the trainbearer. Then he makes an hour's speech to the effect that if business men and universities get on well together, they are likely to get on well together. He himself is sure that they *can* get on well together if they do not fail to get on well together. He himself is a director of a public company and would like to say (with great impressiveness) that the business men he has liked, he has really liked. Some of them, of course, lack tradition. That is unfortunate; but a university can sometimes supply the absence of tradition in a self-made man's son, the kind of graceful charm he is glad to think the ancient families of England possess as their historic birthright. Can you beat it?

Then I have been busy writing memoranda for the P.M. about India. This is, I think, the biggest crisis in our colonial affairs since 1776, and likely to prove as difficult for the same lack of imagination. Simon has produced a very able report which has everything in it except an understanding of the psychology of the situation.² It is no use treating a great nationalist movement as though it consisted of men who have only to be told of the complexity of their situation to agree at once that Great Britain must go on governing them. It is queer how all Simon's defects come out in the document — it is brilliantly written, clear, logical, concise, but lacking in generosity, cold, even, in places, callous, and wanting in that power to make the reader feel he *ought* to go along with the writer which is half the art of writing documents for government. I don't know what will happen to my effort. MacDonald is not a courageous man, he is vain, and he wants to stay in office. My fear is that India will become the Ireland of the next generation — a prospect to me of unmitigated horror.

Then I have been working hard with the secretary of the Delegated Legislation Commission, getting out a kind of "heads of proposals" report for discussion. It looks as though we might hope for a large measure of agreement, and the conversion of Warren Fisher,³ the head of the Permanent Civil Service to my pet hypothesis that under all circumstances all questions of *vires* must be decided by the Courts, a simplified procedure being invented for the purpose, may even mean unanimity. I almost feel as though things I have written to defend for years may come into the body of a government document and even hope to get to the statute-book. That will be worth all the labour these months have cost.

Of other things, there is not very much to tell. I have balanced work by novels, mostly light, save for one powerful Russian novel which I

² On June 10 and 24 the report of the Statutory Commission, under the Chairmanship of Sir John Simon, had been published. *Command Papers* #3568, 3569.

³ Sir Warren Fisher (1879–1948); official Head of the Civil Service, 1919–1939, and member of the Committee on Ministers' Powers.

deliberately did not dare to finish because it rent me in pieces. A good detective story and a P. G. Wodehouse I had not read called *Mr. Utridge* make up the sum total of that side. And I have bought nothing except a vast folio attacking the primacy of Rome which I could not resist as it was (a) Jeremy Taylor's copy and (b) was only one pound. If you suggest I shall not read it, you are right, but may I not say to you as the man in Harrod's said to Frida when he saw my study "I always tell our clients that books give tone to a room."

Here, for the moment, I end. Life, I hope, is now to be peaceful and I shall have more to say. But my love as always.

Ever yours affectionately, H. J. L.

Beverly Farms, July 10, 1930

My dear Laski: A letter from you brings the usual delight and the usual regret that I have no incidents to match yours. The time flies by as it does in a routine—at least if the routine is pleasant. The accursed Trotsky still rides on my back—my secretary reads him aloud to me—we are in sight of the end but over 100 pages remain. I am interested enough not to be willing to throw the book aside but I shall be glad when I am done with it. I don't like him and the book seems to have a dominant purpose to blow his own horn at the expense of Stalin. I feel the tone that I became familiar with in my youth among the abolitionists. He to be sure takes his principles for granted. I should like to see them stated. If he still believes in Marx I thought that *Capital* showed chasms of unconscious error and sophistries that might be conscious. I think that the wisest men from Confucius and Aristotle to Lincoln (if he is entitled to the superlative) have believed in the *via media*. Of course that is unpopular in times of excitement and once in a thousand times it is the extremists who get there. But I have not had a very high opinion of the intellectual powers of such extremists as I have known or known about. All of which is painfully near rudimentary twaddle—but I say it because little things once in a while make me wonder if your sympathies are taking a more extreme turn as time goes on. I always am uncertain how far Frankfurter goes. But I notice that he and you are a good deal more stirred by Sacco and Vanzetti, who were turned into a text by the reds, than by a thousand worse things among the blacks. Indeed, so far as I can judge without having read the trial I doubt if those two suffered anything more from the conduct of the judge than would be a matter of course in England. It was their misfortune to be tried in a community that was stirred up, if not frightened by manifestations the import of which was exaggerated, and, without knowing anything about it, I pre-

sume that the jury felt like the community. I read an odious play by Strindberg the other day — *Countess Julie* — a countess who gives herself to a valet, and at the end goes out with a razor that he has handed to her, as the only solution. It made me think of modernist pictures — and seems like them to disregard the time rate of emotions. The most obvious come to you first and obstruct that which the author or painter wishes to excite. If you see that the clock in the picture will tumble over you feel that, before you notice the elegance of the pattern of lines or the harmony of the color. In the play the hatefulness of the situation and the emergence of touches of brutal boorishness in the valet hit you quicker than the subtleties, and obstruct your appreciation of them — or at least mine. But I read nothing else until Trotsky is finished, except a few pages of Mrs. Piozzi's *Anecdotes of Johnson* if I get into bed a quarter before 12. The secretary read a lot of Birrell earlier, as probably I told you. You haven't answered whether you ever see him now.

My reading propensities have, if not changed, intensified in the direction of subjects akin to my own and away from novels except funny or pleasant ones. I wouldn't touch the unnamed Russian one that you laid aside as too painful.

I am pleased at your prospect of prevalence in the Delegated Legislation Commission.

People believe what they want to — but the relative imminence of death brings me no dogma that might be pleasant. I see in myself a wave of the cosmos that is a little more phosphorescent — that carries consciousness — whatever may be the cosmic worth of consciousness — to a little higher than the average point before it disappears — but I see nothing else except the fact that the cosmos has that and presumably a good deal more among its possibilities.

Without much admiring Bergson I think his *Elan vital* was a good phrase — and so farewell for the moment.

Ever affectionately yours, O. W. Holmes

Devon Lodge, 14.VII.30

My dear Justice: A delightful letter from you tells me of *certioraris* interrupted by lunches with Felix. That I envy you; for I wish I could talk to the lad. I have been fiendishly busy — examinations, committees, and a big piece of drafting for this blessed government. And we have had some Belgian friends here who have had to be shown London and Oxford. It all takes time.

But there have been compensations. We spent a delightful day in the country with H. G. Wells. He was at the top of his form and discoursed

de omnibus rebus in great style. A description of Henry James's style — an elephant of genius trying to pick up a pin; a memory of Oscar Wilde, shocked because his remarks at dinner had failed to shock his hostess; a wild attack on Roman Catholics in the Voltairean manner; a beautiful eulogy of Lincoln as one in whose presence even the elect feel humble. He has without exception the most active and stimulating mind I know. He isn't profound; but he knows that thought is important and he does passionately respect it. Moreover he has not only a really creative curiosity, but also something of the prophetic quality in him. And he is so receptive to ideas that he makes you feel that you are talking just about twice as well as you would ordinarily do. Then the French writer André Siegfried came to spend a day here. I liked him greatly. Like all Frenchmen, he sees things far too clearly in terms of predefined categories. But, he has great insight into big things. I liked, for instance, his argument that the English ideal of a gentleman has prevented us from doing much of the thinking we ought to have done. His description of Oxford as a place where there is more brilliant small talk and more jealousy of adult mind struck me as true and intimately connected with the first. He drew for me a quite extraordinary picture of the recapture of the French bourgeoisie by the Roman Church; and he said that even today your Catholic democrat, like the *politique* of the 16th century, accepts the lay state and protestantism *de facto* and not *de jure*. I don't know whether he has ever come your way; if not, I hope when he next visits America, you will experiment with him for half an hour. Another person I have seen, though not lengthily, was the Spanish liberal Unamuno. He was very attractive as a person and, to me, quite unintelligible as a mind. What, for instance, does a man mean who says that Shakespere could think in four dimensions? Or that Goethe was the square root of the Enlightenment? Why not cube root? But he has a manner, and in this age, in which manner counts for so much, evidently matter must be judged in its terms.

Next I must retail an incredible experience. You will have heard of Conan Doyle's death. The spiritualists organised a great service for their leader in the Albert Hall, so I went last night with Frida to listen. Imagine ten thousand people packed like sardines, a medium on a platform seated next to Lady Conan Doyle, with a black curtain with white stars behind. First a hymn or two beautifully sung by a hidden choir. Then a journalist explains what a great man C.D. was because he had faith. Then a request for complete silence while the medium gets into touch with the spirit world. For an hour she gave messages to members of the audience. "There is a widow here whose husband passed over on July 11. He sends his love and hopes the children are well." Then the grand climax of a message to Lady Doyle. All the people seemed convinced. There

were no tests of any kind, no attempt at control, and the attitude of the audience I can only describe as reverent excitement. To me, more incredible twaddle had never been talked even in the Albert Hall. England, my dear Justice; 1930; seemingly sane people, most of them well-fed and prosperous. In the admirable dialect of your native land, can you beat it?

In the way of reading, one or two good things. Wells's new novel — *The Autocracy of Mr. Parham* — a brilliant performance full of acute insight into the most varied types of mind — Burckhardt's *Civilisation of the Italian Renaissance*, which to my shame I had never read. It is superb; and you feel as though it opened new windows onto the world. If I can make my book on French political ideas one half as good I will say *nunc dimittis* quite happily. Then Benn's *History of Rationalism in the 19th Century*; a really remarkable account of intellectual movements. It makes it clear, if one needs to have it made clear, that the clerical mind is at bottom really incapable of thinking honestly in any ultimate way. Once again I think one is almost overwhelmed by Darwin's massive simplicity — there's the pith of greatness in everything that man did. And for a bet I read *Clarissa* again and (whisper it low) was bored nearly to tears by it. I was lured into it by Birrell to whom I went to tea the other day. At eighty, he is as splendid as ever. He told me that he had just read for the first time the *Deontology* of Bentham. "I felt," he said, "as though I had been asked to masticate an ichthyosaurus." He told me that he had been to hear an eminent pastor preach on drink and that he had to prevent himself crying out that Mr. Stiggins was a living portrait. He had also visited the National Portrait Gallery and saw with dismay that all the villains had the handsomest faces. He also concluded that had he been Nelson he would not have bothered with Trafalgar while he could have stayed with Lady Hamilton. He insisted that Bryce had more learning and less wisdom than any man who has been in a cabinet these hundred years! He spoke of a talk with Roosevelt in which the latter "used adjectives like hammers"; and his last word was that he liked a particular review of mine as I had learned the art "of using eulogy as invective."

Our love to you. In a fortnight we are off to the Moselle.

Ever affectionately yours, H. J. L.

Beverly Farms, July 27, 1930

My dear Laski: Your last letter looks me in the face — as always it gives me the keenest pleasure — and it shall not wait for an answer though I have received a sack of 74 *certioraris*. (I began on them at once yesterday, and have devoted a good part of this Sabbath to them — 24 done

— I hope to give my secretary pain on the morrow.) I was very glad to hear about Birrell. I have reread all his works that I have here — *Men Women and Books* — *Res Judicatae* — and 2 volumes, *Obiter dicta* — a typical and delightful Briton. I believe I had some particular remark that I wanted to make but I have forgotten it. Also I have read through Whitehead — *Process and Reality*. % I didn't understand definitely — I didn't know the words, and he thinks and writes like a mathematician. I got the drift, and felt somewhat remote because I cannot believe that human speculation about the cosmos is likely to amount to much. He seems to feel that he is in on the ground floor with God — which I cannot, either for myself or him. But I like very much that he, like Dewey, does not begin with the self-conscious ego. I was more impressed by Dewey in that way — and really much impressed. However, I can't recite on either — though for a few fierce days I could have on Dewey. My secretary read aloud Mencken's *Treatise on the Gods* — which, as I like M. in some other of his writing, I regretted to think 25 or 50 years behind the times. By the by he, as I should have done a year or two ago, treats with summary scorn the notion that Jesus is a myth — but two or three books French and English have made me more respectful to the belief. I have also listened to what seems to be a really great novel, *My Ántonia* — by Willa Cather — turning the life of early settlers on the prairie (in our time) so hard, so squalid, into a noble poem. I do like an author who doesn't have to go to London or Paris or Vienna to find his genius — but realizes that any part of the universe can be seen poetically and takes what he finds at hand and makes it blossom. I won't mention everything that I have read but I got much pleasure from Owen Wister's *Roosevelt* — which I got before it was called in, to change a few pages that raised a question of libel. If I get into bed 10 or 15 minutes before 12 I allow myself to read until midnight and in that way have reread Mrs. Piozzi's *Anecdotes of Johnson*, which again I found well worth reading. I flatter myself that our times wouldn't stand his boorish bullying, however great it might think him — and so often wrong — in our view. There was something beautiful in the old man, of course. I wonder if Eckerman's *Conversations with Goethe* still would interest. I think of getting hold of them for my secretary to read aloud. He sits in the next room and when there is silence here for a few minutes he appears and asks How about Culture? (Of course with a smile.) I have taken no part in and have seen next to nothing of our Tercentenary¹ — at Salem there is rather a striking reproduction of the poor little houses that John

¹ The Commonwealth was currently celebrating the three hundredth anniversary of the founding of Massachusetts Bay Colony. H. A. L. Fisher, on July 15, had delivered at exercises on Boston Common an address published as *The Bay Colony, A Tercentenary Address* (1930).

Winthrop found on landing or his company had. They got some pretty good ones quite early. At Ipswich there is one with beams that it would be hard to beat in England — if memory does not deceive me.

Your H. A. L. Fisher made an address on The Bay Colony that reads very well indeed. That was in Boston. I didn't hear it. Which was your review that "used eulogy as invective"? It takes time and a magnifying glass to get all the goodness out of your writing. At first I thought it was "analogy" not eulogy and spoken of Roosevelt — and was reminded of his remark that Brewer (who had criticised him) had a sweetbread for a brain.

I can't read the name of your Frenchman André Siegf——? My experience (little and long ago) — with mediums is like your "incredible twaddle" — or as I say drool.

It is time for me to descend to solitaire. Habits are not unpleasant things for the old if not tyrannical. The day is apt to tire me a little and I like the change — if I have a few minutes before 11 — too short for a game I pull a book from the shelf on my right — often the life of Miss Austen. I like to read about her even if I don't adore.

Ever affectionately yours, O. W. H.

Devon Lodge, 26.VII.30

My dear Justice: A delightful letter from you has lain ten days unanswered. But I have lived in a whirlwind of examiner's meetings, visits on business to Oxford, innumerable callers, some political jobs, and all the innumerable things that accumulate round the end of term. It's been hard work. On Thursday, however, we leave for Germany, and then for four blessed weeks I shall know (I think) real freedom for no one I can conceivably know can penetrate to the place — Cochem — where we are going. O blessed day!

I have had all sorts of oddities visiting me. The most amusing, I think, was a Hungarian educated at a Christian college in China. I have heard of men with great purposes in life; this man certainly had the queerest. He wanted my help — mine — to raise a fund for translating the works of Confucius into Hungarian. I said that I could not see any reason for the adventure. He said that Confucius was so wise that its perusal would change the face of Hungarian politics, now, alas, in a degraded condition. I pointed out that fifty per cent of the population in Hungary was illiterate and that of those who could read it was improbable that many would be interested in Confucius. Then, said he, with a superb gesture, let us double the translation fund and distribute copies free. But I insisted on being absolved from any obligation to help. Another gent, also curiously enough an Hungarian, wanted to translate my *Grammar* into his

native tongue. I explained that he must make all arrangements with my publishers. He then told me (I) I was the greatest living political thinker (II) that Hungary was aching for an edition of my works (III) that in person I was more charming than he had ever dreamed, even from my books (IV) that if I could advance him five pounds from our future profits on the Hungarian translation I should be his eternal and illustrious creditor. I protested my unwillingness, whereon with equal charm, he retired telling me that the tragedy of success was its power to breed the love of money. I must add the Spaniard who came to tell me that Professor Garcia of the University of Seville¹ lectured on my books and that if I would only come to Spain I should be greeted as a deliverer. I said that in my modesty I felt I had no knowledge of what I was delivering my Spanish friends from. He replied (what a poor figure Don Quixote cuts beside him) that I was the highest type of liberator for I freed men from I knew not what bonds. I add that I do not think you, my dear Justice, had any conception of the distinguished part your humble correspondent plays in affairs. One who insists on being St. George irrelevantly to the existence of dragons is, I think, clearly an eminent person.

We had a jolly lunch on Thursday with Lewis Einstein, who is as charming as ever. My one fear for him is dilettantism. I wish he had something definite and continuous to do. I am trying to arrange that the University should make him an honorary lecturer in the hope that a course of lectures may pin him down to the writing of a real book. But he is amid the distractions of great luxury and social eminence, and I fear that he may be sucked into that amusing but futile vortex. (Can a vortex be amusing? I don't know!) Then a long dinner with Fleuriau, the French Ambassador.² He amused me much by saying that after six years he understood the English less than ever. "You are," he said, "more momentous about trifles than any people in the world." He told us how he went to see the Foreign Secretary at the House. On the way through the lobby he heard Baldwin say to a neighbour that "England was in real danger," and was distressed at Baldwin's tragic face. He mentioned this to the Foreign Secretary and asked what particularly was the cause of gloom. The Foreign Secretary electrified him by explaining that it was the position in the Test Match against Australia to which Baldwin referred. I also had a very pleasant lunch with old Scrutton, L.J. who spoke of the law with the pride of one of its prophets. But he puzzled me, as I am always puzzled, by insisting that Cairns L.C. was the greatest lawyer he had ever known, and after him Bowen. He told me a pleasant story

¹ Perhaps Carlos García Oviedo, Professor of Administrative Law at the University of Seville.

² Aimé Joseph de Fleuriau (1870-1938) was French Ambassador in London from 1924 to 1933.

of an old man in the Exchequer Court who had some little job he feared might be abolished in the reconstruction of 1873. "Don't be afraid," said Fitzjames Stephen to the old man, "you are a vested interest, and thus certain to be protected by the House of Lords."

Of reading, not very much to record. A pleasant volume of essays by Ernest Barker, (*Church, State and Study*) one of which on the Roman conception of empire pleased me greatly. A volume of short stories, somewhat in the Wodehouse manner by Denis MacKail called *The Young Livingstones*, and a work on American political ideals by W. S. Carpenter which struck me as solemn without being profound. But I reread Trollope's *The Eustace Diamonds* and thought it a first-rate story grandly told. I also read the special supplement to the *New Republic* on Croly;³ but for me it was a little too much in the *de mortuis* manner — rather like what the *Times* would have said.

Our love to you both. I read with horror of your heat wave. I hope it did not disturb you.

Ever affectionately yours, H. J. L.

Beverly Farms, August 9, 1930

My dear Laski: You are the best correspondent I ever had. Each letter is interesting and is pretty sure to be a charming work of art. The only criticism I could make would be that you sometimes don't answer matters that hoped for an answer — but I have nothing of that sort in mind now. I don't always so fully agree with what you print, much as I admire some of it. That you know as to the equality business. I don't see any ground for your aspirations in the prospect of improved economic conditions for the many. That is I see no ground for the prospect. What I can see more clearly is the desire to get rid of a disagreeable contrast in position and public esteem — a desire for which I have little respect. What you say of sovereignty in the pamphlet received today¹ needs further reflection on my part. Off hand it seems an obsession grafted by Figgis and hardly a necessary part of your thinking. The other day Frankfurter brought over Cardozo (C.J. New York) — to my great delight. His face is sensitive, tender and strong — and such he is, unless I greatly err. He is one of the few who have said in print and private the things that make my life seem worth having been lived — and that naturally made me the more rejoiced at the first chance I have had for a real talk with him. Felix seemed in first rate shape but kept in the background for the sake of his guest. My secretary is reading to me James Truslow Adams (no relation) on *The Adams Family* — which I find

³ 63 *New Republic* 243 (July 16, 1930).

¹ Perhaps "Law and the State," originally published in 9 *Economica* 267 (November 1929); reprinted in *Studies in Law and Politics* (1932), 237.

interesting — and at odd minutes I am rereading Maine's *Ancient Law* in Pollock's new edition. At times nowadays it seems a little thin — as an original effort. I am wondering whether I shall put my secretary to reading aloud Hooker's *Ecclesiastical Polity*. I never have read it and think it may be a required subject of examination at the Day of Judgment. There is a second breathing space after the second batch of *certioraris* (75) has been returned — but I live like the wild animals in continual terror for my life. It seems futile to write to you now, for I suppose you are *perdu* in Germany — but this may reach you in time. You will come back enriched no doubt as always — if not with 17th century pamphlets at least with some new experience. May it be joyful.

Affectionately yours, O. W. Holmes

Union-Hotel, Cochem, Germany, 2.VIII.30

My dear Justice: The address will tell its own tale. I write looking out onto a small range of hills completely covered with vineyards, and the swift-flowing Moselle crowned with old houses at my feet. To my right is a vast fifteenth century castle, so fortified, that it is difficult to see how Turenne could ever have taken it under Louis XIV if the inhabitants had food on the premises. There seems to be one winding path to it with gun-mounted walls at every turn. It is a marvellous sight, and I must try to get a photograph that will convey to you some idea of its beauty. The people are fascinating — solid German bourgeoisie, who eat and drink enormously, and look as though it is the unvariable rule at sixty never to gaze upon one's feet again. Certainly when I stand by some of them I feel as though I was a wan illusion of nature, a pure spirit seen darkly through a glass. But it is marvellous how they enjoy life. You see a stout grandfather holding up his wine to the light, and gazing upon it with a reverent ecstasy that can hardly be described in other than religious terms. Another thing struck me forcibly *en route*: if you look at the book-stalls on the stations, it is astonishing to see how much solid literature is sold. There are, of course, the inevitable Edgar Wallace, and the usual dubious magazines, but you see also in quite small towns, Goethe and Schiller, Ranke and Thomas Mann, to take names at random. I wonder whether I could buy say a Shakespere or a Bernard Shaw at the average London station. I was impressed, too, especially at Trier, by the experimental character of the architecture one sees. It is clear that the Germans (I am told under Dutch and Swedish inspiration) are trying to do something new. It isn't massive, like American architecture. For instance the railway station here (a country market town of some three thousand people) is clearly an effort to express something that combines the fact that a railway is science with the fact that Cochem is old; and the result

is something with an unexpected charm of its own. What one feels, even in the 24 hours since we arrived, is the power of this people, their energy, and drive and determination. They almost seem to play because they have measured the object which play can be made to serve. One other reflection. I have never before been in Catholic Germany. It is curious to see how Catholicism assumes a Germanic form. There is a dull heaviness in the crosses and Christs by the wayside which seems to ask you to believe that Christ was a good German burgher intent on his glass of lager after supper. When you see at the tenth century bridge here, a Christ with glowing red cheeks, it is difficult to remember that it advertises a religion and not somebody's beer. But I grow profane.

For the moment, no other news. But I want to send this word of greeting so that its very absence may assure you of our tranquil environment. Our love to you. Ever affectionately yours, H. J. L.

Beverly Farms, August 18, 1930

My dear Laski: Your address, even if I were sure that I read it right, seems too uncertain in duration for me to risk a change from the one that you so admirably put at the head of your London letters. I cannot too highly praise your habit. It saves trouble invariably at this end. I meantime keep on in my routine. Latterly I have allowed myself the pleasures of irresponsibility — not bothered about improving my mind, but gone in for a good time. I did, to be sure, make my secretary read me one book of Hooker's *Ecclesiastical Polity*, which to my satisfaction had the passage that always is quoted¹ and that the Puritanical Austin calls Hooker's fustian. But having got his flavor I thought it would be a waste of time to read the rest. The appreciation of such an idle life in the *Essays of Elia* — just reread, goes far to justify me and I rather think that a little play with unstrenuous thought is civilizing in its way. I think I have mentioned the new edition of Maine's *Ancient Law* — almost as easy as, and akin to *belles lettres* — but perhaps not *God's Trombones* — poems by a negro sent to me by Cardozo, that wonderfully impress me.²

Just now my lad is reading to me from two, I believe out of many, volumes of Grant Duff's *Diary, 1886-8* — a light-weight, but with a lot of that agreeable cultivated English gossip that gives one entertainment if nothing much else. He says the true form of the saying of Oxenstierna is "*an nescis, mi fili, quantilla prudentia regitur orbis*" — citing as the

¹ "Of Law there can be no less acknowledged, than that her seat is the bosom of God, her voice the harmony of the world: all things in heaven and earth do her homage, the very least as feeling her care, and the greatest are not exempted from her power." *Ecclesiastical Polity*, Book I, Sec. XVI.

² James Weldon Johnson, *God's Trombones* (1927).

original authority *Svensk Plutarch*, II, Stockholm 1826, p. 95.³ I always have seen it in some different words — but I think it has an older origin. Do you know?

I had a letter from Leslie Scott today saying how much he liked you and enclosing the first day's proceedings in an arbitration between Lena Goldfields, Ltd., and the Russian Soviet Govt. — to which, it seems, the Soviet Govt. has refused to send its arbitrators alleging that L.G. had cancelled the whole agreement — but it is said that the agreement provides that in such cases the arbitration shall proceed.⁴ The charges of L.G. sound not improbable to an outsider. I observe that the counsel for L.G. said that Stalin of whom Trotsky has so much to say, was the dictator of the U.S.S.R. I shall be interested to see the outcome. Ladies come here to luncheon and are always pleasant, though at times I am reminded of a line of one of the Darwins. "Next week looks very black — a pleasure for every day." Enough of gossip. I wish I could boast of some achievement, but I am having a good time.

Affectionately yours, O. W. Holmes

Union-Hotel, Cochem, Germany, 9.VIII.30

My dear Justice: Certainly this is very nearly a perfect place for a holiday. There is hardly any traffic, and the sheer silence, after London, is in itself most refreshing. And the surroundings are quite magnificent. At every bend of the river, the scenery is different, and there is a comfortable serenity about it which is most impressive. One or two things strike me which seem worth putting on record. If I had to put down the reasons for the success of Germany as a people, I should say, in this order, that they were first industry, second simplicity, and third organisation. Each of them in its way is astonishing. The ordinary man one meets is impressive neither in conversation nor knowledge. But he does his job with astonishing devotion; he is really proud of it as a job. He hasn't the Anglo-Saxon habit of knocking-off as soon as the clock strikes. Then he takes his pleasures very simply. They walk a little, drink a little, take obvious and obviously whole-hearted joy in music and the theatre; but there are no signs of the complicated pursuit of complex pleasure such as you see so widely nowadays. This, for instance, is the most important place between Coblenz and Treves. There is no movie, two public-

³ Sir Mountstuart Elphinstone Grant Duff, *Notes from a Diary*, 1886-1888 (2 vols., 1900), vol. II, p. 106.

⁴ Sir Leslie Scott was the arbitrator named by Lena Goldfields Limited. After the refusal of the Soviet representative to participate in the arbitration, Sir Leslie, with Professor Stutzer as the neutral member of the Board, heard the case and entered an award in favor of the company in a sum exceeding £12,000,000. See 74 *Solicitor's Journal* 648 (Oct. 4, 1930).

houses, a village orchestra (quite admirable), endless fishing, and a Saturday market which patently is an event in the lives of its participants. There is quite a good book-shop, and an even better music-shop; and the 17th century Town Hall is kept about as admirably as one could wish. The only disappointing feature is the Church. This is Catholic, and a quite charming 18th century building is ruined by the most vulgar collection of cheap statues I have ever seen in a public building. I spoke to the priest about it, and he clearly did not even understand that one could object to 14 plaster-casts (coloured) of Christ obviously turned out by mass-production and garish to the last degree. Then their organisation is remarkable. Whether it's the little steamer, or the ferry, or the village threshing machine, the people seem to fit into one another's needs remarkably. There are, of course, faults. There is a certain drab sameness about the talk you get. You don't find the individuality you always tumble upon in an English or American village. The people, like good Germans, are a little too respectful, and a little too neat and orderly. But they are full of common-sense. There is little or no bitterness about the war. The Republic is clearly firmly established; the only man who mentioned the Kaiser to me spoke of him as a figure of comic opera, and thought it a relief to be done with his theatrical gestures. They don't, indeed, like the French; but everyone to whom I speak takes the sensible view that one must either fight them or live with them, and that there is everything to be said for living with them. Let me add that the most impressive building in the town is the School, and that each morning at 7:30 two buses arrive to take the children to the nearest secondary school, and you will see why I am impressed by the communal virtues of these people. They know how to make defeat into victory by those solid virtues of patience, soberness, and hard work, which are, I think, about the best general qualities in the world.

I have done little since we came except write and read and walk. Mostly I have read law, with a view to my lectures at Yale next spring. And the more I have read, the more respect I have for one or two Frenchmen like Geny and Saleilles, and one or two Germans like Ehrlich and Kantorowicz. (Incidentally the likeness of the latter's type of mind to Morris Cohen's is astonishing.) I brought some of Pound's books with me, but I don't find that they grow more profound on closer acquaintance. First of all, they all repeat one another, and second they are much more schematic than his material justifies. I think he has immense learning, often full of insight; but he is too oppressed by his material to have the flash which makes the supreme person. Of other things I have enjoyed hugely some Hazlitt and am more than ever convinced that "My First Acquaintance with Poets" is the best light essay in the world. Then I have read a volume of essays on 18th century French literature by one Albert

which was well worth the price of admission, and an amusing life of Diderot by one Ducros which I enjoyed because the author, as a keen Catholic, does not approve of Diderot, and yet cannot help falling in love with him all over again at the end of each chapter.

By all of which presents, I hope you recognise how well and refreshed I feel. Indeed even Frida admits that I have never looked better and declares her satisfaction with me. She, as always, convinced me that marriage is the natural state of man. I am a convinced monogamist to whom the new morals are without attraction or meaning.

Our love to you. I hope the heat-wave has not caused you trouble.

Ever affectionately yours, H. J. L.

Beverly Farms, August 22, 1930

My dear Laski: A letter from you admirably describing what you find your town to be came just after I had sent an answer to the one announcing your arrival. I have not much to tell of the interval. Mrs. Beveridge who generally accompanies her luncheon here, or shortly follows it, with a book, sent me *The Religious Background of American Culture* by Thomas Cuming Hall about three days ago and I have found it very interesting. His general thesis is that far the most efficient cause of our development in the way of religion is not Puritanism properly so called but Wickliffe and the Lollards. The Puritans were in the Church and thought Church and State indivisible. The Lollards — the great mass of the poor in towns — were outside of the Church and hated its splendors as it hated the luxuries of the upper class in which they had no share. They had no central authority but independent conventicles which were a law unto themselves. They didn't care much for the sacraments but laid their emphasis on conduct. Being townspeople and having no share in the land they were no great hands at agriculture but found their chance in trade, ship-building, &c. He has to rely somewhat on the probability and conservatism of tradition (the same that is seen in children's games) — and in this point leads me to wish to see what authorities he finds to rely upon — and he repeats himself like a jury lawyer. But he quite stirs me up just as I was beginning to wallow in easy literature — *Essays of Elia* — Grant Duff *Notes from a Diary* — short stories by E. M. Forster.¹ *Essays, And Even Now*, by Max Beerbohm — none but the first hitting me very hard. Of course I have only given a hint at Hall. Mrs. B. says he was ordained a minister, and married her to her husband in Germany, and that he is rather a splendid fellow. He seems to have become a sceptic — I suppose too intelligent not to. He is described on the Title Page as Professor of English and American History

¹ *The Celestial Omnibus and Other Stories* (1911).

and Culture — University of Goettingen — and writes with every appearance of very accurate knowledge and acute thoughts. Today I called on Mrs. Curtis to whom contrary to my practise I have read some passages (not confidential) from two or three of your letters — she appreciates them — then Mrs. Beveridge at luncheon — then a young lawyer who wanted to get some relief from me in a case on which his ideas were nebulous — and also, he more than implied, to see me. I sent him off seemingly convinced that he had no standing as yet for help from us — then a drive inland, as it is rather cold — then some reading of Hall by my secretary — then supper and now *you*. I think I quoted to you, but I quote again a gem from one of the Darwins — “Next week looks very black; a pleasure every day.” I don’t like to be hurried or crowded — but I need a *pièce de résistance* as well as light stuff in order to feel that I am accomplishing something. Why not be content with pleasure? I can’t answer, except that by my experience in life and more by the temperament I get from my mother, without some feeling of accomplishment I feel as if it were time for me to die.

Affectionately yours, O. W. Holmes

Apropos of children’s games, my father interpreted some of their ways of counting — that carry their conservatism on their face — One-er zol — Zua zol. Zigazol — Zau — &c. *i.e.* — *Un sol, deux sol, sex sol. Zehn.* Or cushy cow bonny let down your milk cushy cow let down your milk to me and I will give you a silver dee — c.c. *couchez de’* — [illegible].

Union-Hotel, Cochem, Germany, 22.VIII.30

My dear Justice: The main event since I wrote you last has been a little tour with Frida. We went first to Cologne, then to Frankfurt, then to Heidelberg. Each had its own interest, though for sheer beauty, I think Heidelberg deserves the palm. Its castle, and the views one has from there, are quite unforgettable. I saw one or two people, and gained something of an insight into German university conditions; and I had a jolly time hunting books. The German book-shops are remarkable, and the beauty of their book-production even more so, though I think they are more expensive even than with you. I bought a good deal, though, for the most part, old books. Some nice editions of the early German Cameralists¹ which I have long wanted to possess, and some things whose

¹ Cameralism was the Germanic version of eighteenth-century mercantilism, involving in political, juristic, and economic theory acceptance of a paternalistic state and emphasizing the supremacy of the general will of the state over the freedom of the individual.

writers will revive memories for you — Heusler, Jhering, Brunner, and Dernburg.² The booksellers are learned men, and in Frankfurt, particularly, I thoroughly enjoyed a long gossip with them. Everywhere in the law bookshops I saw Leonhard's translation of *The Common Law* and a very common book was the German edition of F. Pollock's *Short History of Politics* which I have always thought the most remarkable thing even he has ever done. The talk with the professors was good fun. Mostly they took themselves (I must add me also) with enormous seriousness, and I think I really understood Pound's mind for the first time. For instance Radbruch of Heidelberg, a constitutional lawyer is the author of a doctrine about the nature of a federal state of which the essence is that sovereignty rests in the constituent organ. I suggested that this was not very helpful in interpreting the U.S. Constitution, to which his reply was that in the true sense of the word America was not a federal system at all. It was very amusing to hear them develop categories and force facts willy-nilly into them; still more amusing to hear them dismiss their rivals as men unacquainted with the true scientific habit of mind. I learned also the evil effect of the foundations — Carnegie *et al.* — as you know, a sore subject with me. Everyone wanted to know how to get money from Nicholas Butler and James Brown Scott for some pet scheme; everyone, equally, had nothing but contempt for men. But they were willing to found almost any sort of institute, if they could only get endowment. One man in Frankfurt complained to me bitterly that he was just going to start an institute for the study of foreign law when Berlin stepped in first and got the money from Rockefeller. But, I said, you can study foreign law without an Institute. He did not think his university would consider he had prestige if he was in competition in that field with Berlin without the backing of Rockefeller. One delightful old man I met was von Below, the medievalist,³ whose talk was an enchantment. He pleased me especially by his passion for Maitland. The great difference, he said, between the average German and the average English scholar is that the latter is still not ashamed of writing literature; Mommsen he thought was the last great German who had both gifts. In his own field, he said, he read

² Heinrich Dernburg (1829–1907), German jurist, whose major achievement was in relating the development of Prussian law to the social and economic life of Prussia; author of *Lehrbuch des Preussischen Privatrechts* (3 vols., 1871–80).

³ The distinguished economic and constitutional historian, Georg von Below (1858–1927) had died three years before Laski's letter was written. Although while at Berlin Below studied under Brunner, there is no indication in Below's autobiographical sketch that he was a student of Ranke's. See I *Die Geschichtswissenschaft der Gegenwart in Selbstdarstellungen* (S. Steinberg, ed., 1925), pp. 1–49. If Laski's reference was to another historian of the same name the editor has not been able to identify him.

Dopsch⁴ in duty bound, but in Maitland he had both interest and instruction. He told me some charming tales of von Ranke whose lectures he attended at Berlin. The old man, he said, was more proud of his pupils than of any of his achievements; and when he, von Below, got his first post he found on his desk on arrival a letter from von Ranke bidding him serve truth first, and Germany afterwards. At Cologne, I had tea with Oncken the historian,⁵ and we talked about Adam Smith on whom he has written admirably. He put him first among all economists because he was statesman as well as technician; then Ricardo; then J. S. Mill; then the American Carey,⁶ upon whom my ignorance is, alas, great. He lamented the passion in Germany (a) for the *inédit*, (which he thought came from France) and (b) for learning as such. When he was young, he said, people went back over and over again to the ultimate questions; now the young *privat-docent* was only too anxious to write about something no one had dealt with before and then spend his life about the theme. I tried to cheer him up saying that one found one's way to the universe only by meditating on the significance of a fact; "no, no," the old man said vigorously, "the young men stay by the facts, they don't care about the connections." He spoke, too, magnificently about the charlatans with whom Germany is infested just now — Keyserling, Ludwig, Friedell⁷ and so forth. He spoke angrily about their vogue in England and America. "Have you no humbugs of your own, that you must import ours?" And then he won my heart completely by telling me that fifty years ago he discovered Hazlitt and had never since then been without a volume of his. And in the war, no writers had given him greater comfort than Lamb and Emerson. I wish I could reproduce the charm of the old man's talk. I liked him hugely.

We came back here on Tuesday. Next Wednesday we start by car for Antwerp: going through Luxembourg. Then two days there to see the Flemish pictures on exhibition and on Saturday night home. It will have been a very happy time; and we all feel thoroughly refreshed.

Our love to you, and Diana calls out that I am to send you a special message from her.

Ever affectionately yours, H. J. L.

⁴ Alfons Dopsch (1868—), Professor of History at Vienna, coeditor of *Monumenta Germaniae Historica* (1892), author of *Die Wirtschaftsentwicklung der Karolingerzeit* (2 vols., 1912–13).

⁵ Hermann Oncken (1869–1945), Professor of History at Giessen, Heidelberg, and Berlin, was a leading historian of modern Germany. His writing on Adam Smith has not been identified.

⁶ Henry Charles Carey (1793–1879), optimistic critic of Ricardo and Malthus, best known for his *Principles of Political Economy* (3 vols., 1837–40).

⁷ Egon Friedell (1878–1938); his *Cultural History of the Modern Age* (Atkinson, tr., 3 vols., 1930–32) had much of the mystic gloom and some of the learning of Spengler's more portentous work.

Devon Lodge, 5.IX.30

My dear Justice: We have been home just a week after a quite wonderful holiday. We ended it by motoring back from Cochem to Antwerp through Luxemburg, some of the most thrilling scenery I know. And at Antwerp I spent nearly a day at the exhibition of Flemish pictures which would have won your heart. What moved me most was the elder Brueghel, who is clearly a philosopher of the first order; his insight into men is as remarkable as his sense of colour. And his etchings are almost more thrilling than his paintings. I wonder if you know them, particularly the Seven Sins? They have a verve and a power of command over detail that left me gasping. Here I have been mostly busy on an article about Diderot for *Harper's*¹ which I have thoroughly enjoyed doing (I hope you will enjoy it later). It meant much re-reading; but when I came across the sentence "I would give ten Watteaus for one Teniers" I wished I could have shaken him by the hand. Did you ever look at his "*Pensées sur la nature*"? It is amazing what vistas they open up.

We had a surprise visit the day before we left Cochem from Z. Chafee at Harvard and some good talk with him. But his account of Pound disturbed me much; if it is only ten per cent true P. must have become impossible. And even Chafee's loyalty could not conceal the fact that all the people at Cambridge you and I care about are unhappy about him, especially Felix. It seems to be a very bad case of megalomania. But when anyone, like Pound, has written the same book seven times, one begins to suspect that something is wrong.

I envy you the talk with Cardozo, whom I met for one evening in 1926, and by whom I was enormously impressed; not merely by his wisdom but, almost more I think, by his simple beauty of character. And I am glad you liked Hooker, even at one draught, for he always struck me as a big fellow with a style as impressive as a piece of gold brocade. Diderot apart, I have been reading Leigh Hunt and Lamb since I got back, always with delight, and, in the case of Lamb, something more. He is pure magic; and he can't put a pen to paper without showing you that he is magical. Incidentally I have re-read Arnold's essays in criticism and was much struck by the fecundity of thought in those on Marcus Aurelius and Spinoza. And I read a volume of essays by Virginia Woolf called *The Common Reader*, one of which (on not knowing Greek) I do urge you to read. I thought it beautiful in the supreme sense that anyone, however big would have been proud to have written it. Just now I am in the middle of *Evelina*; and its adorable simplicities compensate even for its Johnsonian rotundities.

¹ "Diderot: Homage to a Genius," 162 *Harper's Magazine* 597 (April 1931), reprinted in *Studies in Law and Politics* (1932), 48.

One or two little things have pleased me and I put them down on the general principle that one should share one's pleasure. The *Berengaria* leaves tomorrow for New York with four of my young men on board, all the sons of working-class parents, two bound for professorships in Canada and two similarly in the U.S.A. Another of my young men has been given a fellowship at Oxford, and another one still a big job in the League. That kind of thing makes one feel that one doesn't sweat in vain. And I whisper in your sceptical ear that had there not been the artificial equality of free education they would probably have been clerks and grocers' assistants like their fathers. As a matter of fact any logical dissection of Holmes, J.'s "betterbilitarianism" [*sic*] would demonstrate that he shares these views with me.²

I have bought but little since I got back, as Frida and I were captivated by an eighteenth century tallboy in Soho, and by joint effort we bought it to adorn the hall where it presides in silent majesty. But I picked up a pretty copy of the Dr. Armaingaud's *Montaigne* together with the very rare book of Villey on his sources. The latter which I have been paging genially in bed is an astounding feat for the author, who seems to have tracked Montaigne down the most devious bye-ways, is blind; and one simply becomes silent in the face of that type of heroism.

I must add also that I went out last night to the Disabled Men's Hospital at Richmond and gave the 70 men there a lecture. I wish you could have seen those brave fellows — all of them after 12 years without hope of recovery and mostly still racked with pain as cheerful and kind as any set of human beings. I was supposed to stay till ten but they begged for more talk and it was midnight before I crept away. One poor fellow, so wounded that he has to wear a mask, asked me for books to read, so I sent him a parcel, and this afternoon he called up to say that "he 'oped 'e'd meet 'azlitt in 'eaven." Isn't that adorable!

We are hoping that tonight Morris Cohen will turn up. He has been at a philosophical Congress at Oxford.

Our love to you as always.

Ever affectionately yours, H. J. L.

Beverly Farms, Sunday, Sept. 14, 1930

My dear Laski: Two letters from you within a week — the last (especially delightful) coming this morning and written from home. I, meantime, have been having the Pollocks here. They arrived last Monday after 9 p.m. having motored from N.Y. successfully to Boston but after that wandered for a wasted hour in the effort to find the North Shore. They

² Holmes's simplest definition of a "bettabilitarian" was: "One who thinks you may bet more or less on the universe." (Holmes to Felix Frankfurter, February 16, 1912.)

left yesterday (Sat.) morning for a night at Chocorua — I know not where — thence to motor back to President Lowell next Tuesday and then home. Rather sporting for two so old people, both lame from broken legs, and Lady Pollock having also broken her right wrist. They were fully on deck and said that they enjoyed themselves. I think they really did. I had in some agreeable women for luncheon and a married couple for supper, and took them to drive to Gloucester and Marblehead. There was no chance to take them around Rockport. P. and I would take a short slow toddle in the morning — and while they were here I took a newspaper which at other times I do not and so have peace.

Naturally I haven't read much — a little Carlyle and De Quincy and now Eckerman, *Conversations with Goethe*. I have on hand the second part of *Faust* with Bayard Taylor's translation for another try at that. I am prejudiced against it. If a man chooses the form of a play, it seems to me that his first duty is to make it good in the external sense — *i.e.* to give it a coherent, interesting, easily intelligible movement. If it doesn't have that I don't care for inner meanings. Let the author put them in a treatise — but a play must in the first place be a play — not be a lord among wits and a wit among lords. I found myself repelled by the prophetic magisterial tone of Carlyle — especially as in some cases I thought he had no message to deliver. So far as my limited memory goes I don't agree with you and Diderot about Watteau and Teniers. I was much moved by the discourse of a former boss of the Wallace Collection (a very well known critic, now dead) standing in front of the Watteaus.¹ He became a different man as he showed Watteau looking on at but not sharing the gaieties and splendors. In a fortnight my vacation will be over, and I expect some *certs.* before then. I have done 175. The time has rushed by — old age and routine make time fly fast. I don't feel as if I had much to show for my quasi leisure, but a fairly long list of books read (long for me — not for you) looks respectable. I have kept very well — so far. My love to you all.

Affectionately yours, O. W. Holmes

Devon Lodge, 20.IX.30

My dear Justice: I have been pretty busy since I wrote last. First Morris Cohen turned up from a philosophical congress at Oxford¹ and spent five days — a delightful guest. His range of knowledge and acuity of

¹ Sir Claude Phillips (1848–1924), art critic, was Keeper of the Watteau Collection at Hertford House from 1897 to 1911.

¹ Cohen's paper, "Possibility in History," which he had delivered at the meeting, is published in *Proceedings of the Seventh International Congress of Philosophy* (1931), p. 19.

insight were even more remarkable than in the old days; and he has lost a certain acerbity of temper which used to blunt the edge of his wisdom. We talked the world round, hardly disagreeing. There was one tea at which I wish you could have been present. He imported a German mathematician and they discussed mathematical logic. For one hour I heard names and ideas discussed as of vital significance without ever knowing whether I was on my head or my heels — an experience that makes one humble. Then we paid a visit to my people in Manchester — enlivened by an evening with Alexander the philosopher who, as always, was delightful. He cracked up Whitehead to the stars, spoke warmly of Dewey's *Experience and Nature*, and was passionately angry about the evil influence of Bergson on French philosophy. But Manchester is like a lesser Pittsburgh, and we were both very relieved to be home. However, I found one book there which pleased me, the five volume edition of Byershöck, 1730, in nice vellum for five shillings; I remember Lowdermilk offering it to me for thirty dollars and felt comforted. And I got much reading done. A charming novel — *Angel Pavement* by J. B. Priestley, a demi-romantic picture of unimportant people in the city, well done because it knew how to make detail significant. A good history — *Modern Culture 1543-1687* by Preserved Smith, nothing new, but putting a whole host of things on one plane, and bitterly anti-Catholic which pleased me much. An admirable book by one Torrey of Yale, on *Voltaire and the Deists*, showing that the old legend of his debt to Bolingbroke has nothing in it; that V. hardly knew him in England and from the annotations in V's copies, (which are in Leningrad) had only contempt for his work. Then Karl Pearson's *Life of F. Galton*, too big and full, like most scientific biographies, but still an interesting light on the Darwinian and Post-Darwinian epoch. And for the first time since I left Oxford Lecky's *European Morals* which I think is really remarkable; I don't know anything since that touches it except perhaps Friedländer's *Roman Manners*, and that, of course, touches a much narrower field. Lecky made me doubt more than ever before whether Christianity was not almost wholly a deleterious influence. Certainly when it conquered it had lost most of the moral qualities which might have made it valuable. Then the translation of Max Weber's famous essay on *Protestantism and Capitalism*. It deserves its reputation, though I think there is a tendency in him to put the cart before the horse. I agree that the Calvinist conception of occupation as a "calling" was exactly what the new economic order needed; but I don't think it was conscious anticipation of need so much as an inevitable response to need. I mean that religions don't shape economic categories, they adapt themselves to them. But the essay is certainly a most brilliant and suggestive piece of work. These things apart, I have been busy writing at Diderot which I finished yesterday and sent off to

Harper's; you will see it presently there, I hope with pleasure. By the way, I am sending you to Washington a book of Brueghel's drawings. We both liked him beyond any other person (as I think I wrote to you) at the Antwerp exhibition; and these reproductions, though not so clear as I would like, may, with a glass, convey to you the strength which impressed us so much. I thought the drawings better than the paintings with two exceptions, and I don't think the latter reproduce very well.

I have still a fortnight before term begins; though Sankey tomorrow wants me to begin some delicate work for him in these Indian negotiations, and I am slowly drafting my part of the report on administrative law. Sankey, of course, is an angel to work for, he responds at once to suggestion, and he hasn't pride of authorship (that's the chief difficulty in working for MacDonald who in that respect is much like Wilson). But this Indian tangle is so complex that one is almost afraid to put suggestions on paper just because generalisations are so very difficult.

You, I expect, are beginning to count the days until Washington. I do hope the term will prove a happy one. One day at least I shall brighten before you. I have given a note to you to my friend Schacht, the late President of the German *Reichsbank*,² and possibly, the next President of the German Republic. He is a brilliant and attractive creature and I think will really interest you.

Our love to you. Keep fit and don't overdo it.

Ever affectionately yours, H. J. L.

Devon Lodge, 27.IX.30

My dear Justice: A delightful letter from you, telling me of the Pollock's visit. It really is astonishing to hear of their courage in making, at their age, so astonishing an adventure. If I mistake not, it is now something like sixty-three years since you first met one another — a wonderful record.¹

I have had a busy week. I had to write a long lecture, which I will send you when printed, on justice and the Law, for which a good gent. left thirty pounds a year to some society here.² Then suddenly Sankey

¹ Hjalmar Schacht (1877-); in January 1930 Schacht had resigned the presidency of the *Reichsbank* in protest against the *Reichstag's* approval of the Young plan. In 1931 he made a lecture tour of the United States, and in 1933 Hitler restored him to the presidency of the *Reichsbank*.

² It is believed that Holmes and Sir Frederick Pollock first met in 1874; see John G. Palfrey's Introduction to 1 *Holmes-Pollock Letters*, xv, footnote 3.

³ The lecture, delivered before the Ethical Union, is printed in *Studies in Law and Politics* (1932), 276.

sent for me over the Imperial Conference³ and I have been doing memoranda for him ever since. The job has been interesting beyond words; it has also made me a little Englander. I never imagined that empire could be such a nuisance on points of no real import *e.g.* what is to happen to the royal prerogative in a Dominion if the King goes mad and a Council of Regency has to be appointed? And I did not imagine, until I saw the letters, that the King interfered so constantly on points which are bound to raise grave difficulties for his government. I told Sankey that the real lesson of this experience is the wisdom of the maxim *solvitur ambulando* in matters of government. The lawyers sat down and tried to define the British empire, which is *sui generis*, by analogies drawn from dubious international law. In the result they have raised questions of status and prestige which are all formidable and all meaningless, *e.g.* if the empire is now a union of equal states under a single monarch, what is the standing of a Dominion High Commissioner *vis à vis* a foreign ambassador. The real answer is "Don't be silly." But these blessed legal civil servants have drafted Acts and Orders in Council enough to make a wise man shrink with horror into an early grave. I wish you could have seen some of my marginalia; I think they were not unworthy of your disciple.

A much pleasanter day was in the country with the Allen who wrote *European Political Thought in the 16th Century*. He is now working at a book on English ideas 1603–1660 and I went to have a chat with him about it. We agreed that Hobbes is the genius of the period, and, after him, a fellow called John Hall whom I discovered about 3 years ago.⁴ We also agreed that Prynne is a vastly overrated person in whom volume has been mistaken for insight and learning. He puts Filmer much higher than I, and Cromwell not so high; and I had a job to make him see the social significance of the great movement for law reform under Cromwell. But it was grand talk, and a good change from the meticulous dullness of the Imperial Conference. Then I went to a farewell dinner to the German Ambassador⁵ at Downing Street. Bernard Shaw was there, and

³ The Imperial Conference opened on October 2. Though the Conference gave its attention principally to current economic problems, its agenda included questions concerning the constitutional relationships of the members of the British Commonwealth which were dealt with in the Report of the Conference on the Operation of Dominion Legislation.

⁴ J. W. Allen, *English Political Thought, 1603–1660* (vol. I, 1938). The John Hall referred to is perhaps the author of "The Grounds and Reasons of Monarchy Considered" which was prefixed to Toland's edition of *The Oceana and other Works of James Harrington* (1771). Hall, a contemporary of Harrington's, had died "before he was full thirty, lamented as a prodigy of his age." *Id.*, p. xxv.

⁵ In June 1930, Dr. Friedrich Sthamer who had been German Ambassador in London since 1920, was succeeded by Baron Constantin von Neurath (1873–). In 1932 von Neurath became German Foreign Minister, hold-

I came away with the impression that he felt that he was the guest of honour and rather resented the attentions paid to the poor Ambassador. He really is a poor creature for a great man — talks glibly of things about which he knows nothing, (e.g. reparations), lays down extravagant generalisations which he has never thought about, and is patently unhappy unless he is the centre of attention. A nice German there said to me that he supposed it was the artistic temperament; I said I thought in the non-elect, it was usually called bad manners.

I haven't as you can imagine, had much time for reading. But I have read a supremely interesting book by Namier on party politics at the accession of George III which makes one feel that, with all its ills, the present condition is admirable. George's letters to Bute are incredible; they are written with a degrading servility which makes his attitude to others, and his general attitude later, almost unintelligible. I may say that I think you did well to get rid of him; I wish we had. I read also Ghandi's *Autobiography*; and the best phrase for him that of Leslie Stephen for Robert Owen "one of those intolerable bores who are the very salt of the earth." His nobility of motive, his courage, and his simplicity, are all beyond praise. But he has no political sense whatever, his humility has that final arrogance which belongs only to the ultimately humble man, and he has that intimate communion with God which makes rational argument quite impossible. I can see that he presents any government with the problem that Christ would do; and no modern government dare repeat the Crucifixion. Incidentally this reminds me of a good remark of D'Abernon⁶ to Stresemann at one of the disarmament rows in Berlin. The French made a great fuss about four guns they discovered. "What possible result," said Stresemann to D'Abernon, "could four bits of old iron have." "Remember," said D'Abernon, "the mischief brought by four nails at Jerusalem nearly two thousand years ago." I must add Sassoon's *Memoirs of an Infantry Officer* — a book with a wistful beauty quite beyond praise.

I have bought one pleasant trifle — a Machiavelli's *Discorsi* in the Aldine edition, bound, for some swell I should think, in a beautifully tooled morocco of about 1540. It is very attractive, and I picked up a nice set of Bynerhöck in five volumes for two shillings.

I hope the journey to Washington was accomplished with comfort. You will not forget that I am dining with you on your birthday.

Our love and warm greetings for the term,

Ever affectionately yours, H. J. L.

ing that office under Papen, Schleicher, and Hitler. In 1946 he was sentenced to fifteen years' imprisonment as a war criminal.

⁶ Edgar Vincent (1857-1941), first Viscount D'Abernon, was British Ambassador in Berlin from 1920 to 1926; author of *An Ambassador of Peace* (3 vols., 1929-31).

Washington, D. C., October 9, 1930

My dear Laski: Your promise to dine with me on my birthday is delightful and all I can say is: May I be there to see. For although everything seems to be going well life seems precarious. If one has no illness it is so easy to fall and break a hip bone — but I don't worry, I only wonder. Your letters are full of interest as usual and I am rejoiced at what you say about Bernard Shaw — also I am thankful for the quotation from L. Stephen about Robert Own — also D'Abernon to Stresemann about 4 nails at Jerusalem — but there is no end to the good things you tell me or say.

The term has begun. The first two weeks for *certs.* &c. not to speak of private work — acknowledging books &c. I was rather put to it to frame an answer to Milt Gross for *He Done Her Wrong; The Great American Novel with not a word in it — No music too* — I quote without the titles before me. We both are appreciators of *Nize Baby*. This, though it has fun, presents more difficulties. In your last but one you quote Alexander about Whitehead. About $\frac{2}{3}$ of W.'s book I did not understand — but I felt a limit to my interest. Whitehead has, or seems to have, the mathematician's conviction that he can get in on the ground floor of the cosmos. It seems to me so unlikely that man should reach the cosmic ultimate that I don't care for such speculations. Of course I can't say that Whitehead hasn't uttered the last word — but I know no reason for believing that he has, and doubt if he or anyone else could offer one. I said to my secretary¹ the other day — (it pleased me and I'm not sure that I didn't tell you): "It would make one a little happier if God would come down and snuggle up to one and say 'Now I'm going to give you the real tip about the universe — and to show you that I'm the genuine thing I will do a little miracle for a starter.' Puff. 'You see you are in another world.' Puff. 'Now you are back again. Well, the correct tip is XXX. But don't tell it for they'd lock you up as crazy' " — I must stop but just a word about the *Nicomachean Ethics*, in the Everyman translation — read to me by my secretary — I sleeping when I saw fit. Of course I really revere Aristotle as a great man and saw some few evidences in the volume. I also understand that many things are formulated that were not in Aristotle's day. But for present purposes the book seems to me hopeless drool — I haven't read the like for years. If I am wrong indicate how and why.

Now I really must stop.

Affectionately yours, O. W. H.

¹ Robert W. Wales, presently a practitioner in Chicago, was Holmes's secretary in 1930-31.

Devon Lodge, 11.X.30

My dear Justice: You, I expect, like me, are now in the whirl of term. It has been hard work this week, for there has not only been the ghastly rush of students and committees, but, even worse, aid to Sankey on the constitutional side of the Imperial Conference. This last has been hard going, so infinitely complex and delicate, with the Irish and S. Africans making pretty little points of no special importance which have yet to be met. A good example is a four-hour discussion on the instrument to be used as seal for a Gov. General's appointment. Shall it be the great seal: Or the signet royal? Or shall the privy seal be used for this end? Or a plain wafer with the royal arms? When the legal mind goes into these mysteries, it gets much more excited than over large issues. I evolved, I think, a good solution. It horrified the lawyers, but it seems to have won a warm welcome from the politicians. It was, breathe it low, that no seal should be used at all. A document should be prepared saying "I George R etc. hereby appoint," he should sign it, and the Prime Minister of the Dominion concerned should countersign it in the presence of the Chief Dominion legal officer as his witness.¹ To think that grown men should quarrel over this kind of tripe in 1930.

I have had to go to various dinners to meet the Dominion premiers. The Canadian, I think, has brains;² he is vigorous, direct, and forcible. The New Zealand man hasn't even ordinary intelligence.³ He can't follow an economic, much less a legal argument, and merely bleats. The Australian is a good, simple fellow who simply was not made for complex issues.⁴ He told me that he was greatly impressed by the King's wit; I asked for a sample. "Well," he said, "the King said to me, 'I expect you will be pretty busy while you are here, Mr. Scullin.' 'Yes sir,' I replied, 'Conference all day and a dinner every night.' 'Well,' said the King (this is the wit) 'you must be glad you haven't to eat two dinners.'" On the other hand I was greatly impressed by the Canadian Attorney-General⁵ — Loring Christie ten years older in type — clear, succinct, and with a real flair for getting to the roots of the problem.

¹ The final decision was that the commission of the Governor General should continue to be countersigned by the Secretary of State, who controls the Signet. See Berriedale-Keith, "The Imperial Conference of 1930," 13 *Journal of Comparative Legislation and International Law* 26, 35 (1931).

² Richard Bedford (1870-1947), first Viscount Bennett, was the Conservative Prime Minister and Minister of External Affairs, 1930-1935.

³ George William Forbes (1869-1947), Prime Minister of New Zealand, 1930-1935.

⁴ James Henry Scullin (1876-), Labour Prime Minister of Australia, 1929-1931.

⁵ Hugh Guthrie (1886-1939).

Of other things there is less to tell. I have read with pleasure, but without excitement, the first volume of Trevelyan's *Reign of Queen Anne*. It is in the true Macaulay tradition, but lacks Macaulay's vigour and is uninformed by any philosophic insight into history. But it has great charm and paints a most interesting picture of Marlborough. Also the Hammonds' *The Age of the Chartists*. A thrilling book, with one or two things in it which are unforgettable, especially the comparative study of discontent in 19th century England and discontent in Greece and Rome. There is one tidbit in the chapter on education which I must not forget to tell you. The Inspector visits a school where, for twopence a week, the master gives his happy pupils instruction in reading, writing, arithmetic, the use of the globes, astronomy, geology, elementary theology, and linguistics. "*Multum in parvo*, in fact," says the Inspector. "Yes," replies the Master, "you can put me down as teaching that too." Then a first-rate book by Judge Parry (a retired County Court judge) on the law as it affects the poor — a beautiful piece of effectively simple humanism; and the autobiography of Wilamowitz the classical scholar, which is quite moving. I also enjoyed Balfour's fragment of autobiography, noting two things, first that A.J.B. was rendered semi-futile by the fact that he didn't have to do anything unless he wanted, and, second, that in the eighties for sheer insight into the nature of the social question there was certainly no man who came within miles of the quality of Chamberlain for insight and force. The Home Rule split, I believe, is more responsible than anything else for the destruction of the natural evolution of British politics. It was simply a tragedy. I must mention, too, an amusing novel of the life literary which I urge upon you as the accompaniment to solitaire — *Cakes and Ale* by Somerset Maugham. Please see that your secretary procures it for you without fail.

Of books bought I can note only two (I) the Aldine edition of *Machiavelli's Discourses* — a really beautiful copy and (II) *The Opera of Bynkershock*, five noble volumes, at 2 shillings per volume. But the real chances do not begin until November.

Term, of course, has brought its amusements. I was visited by an angry mother who informed me that her daughter, now in her senior year, had become engaged and asked me to take the necessary steps. I said that I did not know what I could do: we could not interfere in a student's private affairs. Her idea then came out that we should sack the young man. I explained gently that this was impossible. So she left threatening that I should be held responsible for anything that occurred. Another joy was an Iraqi gentleman who wanted a Ph.D. He had no undergraduate training and I stated my regret that this was essential. "In the ordinary case, yes," he said very gently, "but I am from one of the first

families of Iraq, obstacles of this kind cannot hinder my career." That's the real way to make a fortune.

Our love to you.

Ever affectionately yours, H. J. L.

Washington, D. C., October 24, 1930

My dear Laski: How many interesting and amusing things you always tell me. I am a little surprised by your high praise of Parry — the little that I have read of his writing has not impressed me. I sent at once this morning on reading your letter for *Cakes and Ale*, and it is to be read as soon as we finish *Humanity Uprooted* by Maurice Hindus which Brandeis put me on to. I am the minion of you children of the upward and onward in my reading — though I am not an upward and onwarder. I am kept at home today by the doctor because of a little cold but have hopes of being able to go out tomorrow to the conference of the JJ. This is the first week of arguments. I foresee some clashes of opinion and am wondering what turn our new member will take.¹ He makes a good impression, but as yet I have little notice of his characteristics. I may have remarked before that it is strange how many important modifications of the law McReynolds has been the mouthpiece for, including the overruling of a number of decisions written by me — without, so far as I can see, any more convincing argument than that he had a majority behind him. There are several points on which all that I can say is let those who have established the change say how far they will go. These local difficulties are not interesting, but they more or less occupy my mind and bother me.

Later. I have not attempted to work today and there is a horrid rate case on which I am ill prepared to recite.² But I have listened to more of *Humanity Uprooted* — a very interesting account of Russia by a Russian who returned from America to see how things were. His account of the Communists shows in the most extreme form what I came to loathe in the Abolitionists — the conviction that anyone who did not agree with them was a knave or a fool. You see the same in some Catholics and some of the "Drys" apropos of the 18th amendment. I detest a man who knows that he knows. I gather from the book and more from other sources that the Communists have killed so far as they could those who did not agree with them and want to kill the rest. They present a case where I fail to see that war is absurd. When two crowds determinately wish to make

¹ In June 1934, Owen J. Roberts (1875–) had been appointed to the Court to fill the vacancy resulting from the death of Mr. Justice Sanford.

² Perhaps *Beaumont, Sour Lake and Western Railway v. United States*, 282 U.S. 74 (argued, Oct. 20; decided, Nov. 24, 1930; opinion by Butler, J.).

different kinds of a world, if they come in contact I don't see what there is to do but to fight. I must stop — I am sorry to write a dull letter but I can't help it. I am not sorry to think that I shall get my marching orders before long.

Ever affectionately yours, O. W. Holmes

Devon Lodge, 26.X.30

My dear Justice: Hectic days since I wrote to you last, beginning with a telephone call from Felix in New York. Since then I have been nearly run off my legs, trying to get the Prime Minister and Webb to see sense about their policy.¹ I think the P.M. would be all right if he were left alone; but Webb has the rooted and incurable obstinacy of the doctrinaire who, when he has arrived at a position, can be more impossible in defending it than the least practical man who has ever handled a practical policy. It is a bad business, hardly compensated for even by the pleasure of hearing Felix's voice three thousand miles away.

What else have I done? Tried to talk sense into Irishmen at the Imperial Conference on the question of British nationality. *Quaere*, does it really hurt Irish prestige, if a ship of British registry leaves Dover with a crew containing one Irishman. The ship is wrecked off Barcelona. The lifeboat takes the crew into harbour, and its members call on the British Consul for means to return home. The Irish say that an Irishman is humiliated by having to call on a *British* consul. They would prefer him to be helped by any other than a British official unless we can invent an adjective less historically offensive to their national pride. Can you beat that? Imagine calling a man "His Majesty's Consul for the Commonwealth of Nations to which, *inter alios*, Ireland and Great Britain are parties"? Certainly nationalism, like religion, is a source of intolerable difficulty in the modern world.

Of other things, not much seems worth reproduction. I have given a public lecture, a copy of which I enclose separately.² I have dined with dusky Indian delegates to the Round Table Conference.³ I have agreed to give three lectures in Minnesota University in April. I have listened to H. G. Wells on the future of biology in its social context. I have settled a big labour dispute in the Isle of Wight; and I have agreed with my colleagues in the Industrial Court that a promotion in the Civil Service ought always to involve an increase of pay. This last seems un-

¹ Presumably with respect to Palestine; see, *supra*, p. 1261.

² Probably his address before the Ethical Union, *supra*, p. 1285.

³ The Round Table Conference convened on November 12. Its principal concern was the demand of India for Dominion status — a demand which was sympathetically received by MacDonald as Chairman of the Conference.

important but it actually costs half a million dollars at the end of eight years.

Of reading little of the first importance. A good book on Luther by Böhmer — the clearest portrait in the light of recent research that I have read. It is intended, I think, to make one admire Luther more; I think it made me like him even less, though, compared to Calvin, I should say that he must have been a grand companion. Then two volumes by Bréhier on the history of European philosophy 1600–1800, good French clarity, but lacking in architectonic quality. I should like to see a history of philosophy which puts the doctrine into its actual and immediate mental climate, explains why it is significant that Kepler and John Hawkins belong to the same epoch, and these neat French schemes leave me a little cold. But he is very good on Hobbes whom I love, and properly respectful to Spinoza whom I am compelled, doctrine apart, to revere as no other man in the history of the human mind.

I must not omit to tell you of our lecture at the University by an eminent continental gent. (from Turin) on the history of bills of lading. Old Scrutton was in the chair and, over-persuaded by him, I went along. At first I thought the man was talking Italian of a dialect my feeble Italian did not allow me to follow; but a look of complete bewilderment on the Italian Ambassador's face comforted me on that score. I then assumed that it was Esperanto and composed myself for sleep. An English word, clear, vigorous and unmistakable, aroused me — something was "damn silly." It turned out on a final inquest that the learned lecturer had translated his piece into English, a language with which he had only a visual acquaintance, mostly from novels. He read out his translation on a principle of private phonetic theory. You cannot even imagine the utter chaos of the result. I was sorry for poor old Scrutton; but the judge was worthy of his job. He picked up the sheets of the ms as the lecturer put them down, and, at the end, produced an exquisite little five-minute summary with a felicitous hint that the lecturer had been wandering in dark seas with no lamp save that of nature to guide him, and that those present had not only been given a lecture in law but also an illustration of the way in which new dialects may conceivably have originated. Incidentally I sat next to Mr. Justice Hill there. He has just retired from the Admiralty and Divorce Court. He said he had had enough; "It is difficult to spend fifteen years with one foot in the sea and the other in the sewer." A good description I think.

Our love to you warmly. Four months today I hope to land in New York.

Ever affectionately yours, H. J. L.

I.XI.30

My dear Justice: A week of hard toil with amusing experiences to diversify it! Of interest, a lunch with the Prime Minister of S. Africa.¹ He is a most curious mixture of medievalism and modernity. When he talks of commerce, universities, or foreign affairs, he speaks like a man who is eager to be abreast of the last possible development. Speak to him of the native in Africa and it sounds just like a Southerner of the *Dred Scott* period defending slavery! Then a tea with Austen Chamberlain who spoke with feeling of your friendship with his sister. He is a curious type. He has at the bottom the feelings of a great gentleman, but all these are so plastered over with a stiff manner that unless you go on trying, when his real kindness becomes evident, you tend to think that he is just being rude and give up the effort to talk to him. I am inclined to guess that the statesman suffers enormously in ordinary life from the fact that he speaks from an artificial eminence. He is accustomed to giving orders; he does not easily argue; he isn't used to having his premisses examined. And he is, of course, surrounded with excessive adulation which makes him unwilling to realise that criticism need not proceed from hostility. That's what is so wrong with MacDonald, and what constitutes the great charm of Baldwin. You can talk to the latter as though he was a friend. With MacDonald, as with Wilson, unless you can convey your criticism in the form of eulogy, it is likely to do your cause more harm than good. I wish a technique could be invented for persuading statesmen not to live on a pedestal. Webb is suffering badly from it just now. He is literally shocked that I should criticise his policy for Palestine and he assumes that I can't really like him personally if he is not to be supported by me in his plans.

I have been reading a good deal. The first volume of Churchill's *Autobiography*—a good book, full of grit and courage. To himself he is amusingly Napoleonic and I think about as unpleasantly active as Roosevelt. One feels that he has never had half an hour's quiet reflection in his life; but he has certainly lived every minute of it. Then E. S. Montagu's *Indian Diary*—which I would like to make compulsory reading for all administrators. It reveals the physiology of empire amazingly, the isolating effect of ceremonial, the cringing influence on the subjects of an irresponsible government, the evil of routine. Then a really good book on the Moral Sense philosophers of the 18th century by old Bonar whose *Life of Malthus* you may remember. He is very good on Shaftesbury and Hutcheson. He gives rein to an old hobby of mine, the notion that a good deal of right conduct is born of aesthetic sense;

¹ General James Barry Munnik Hertzog (1866–1942), the South African Premier from 1924 to 1939, was attending the Imperial Conference.

it's like the capacity to appreciate a good picture. And, lastly, Trollope's *Eustace Diamonds* which I had never read before. Quite one of his best; a little jog-trot in style, as always, but with real plot and good character drawing. Sir, that man could certainly tell a story.

I have also bought one or two things. A heap of pamphlets on the prelude to the Fronde, one or two of them important and moving. A man who comes from Bordeaux where the disarmed troops are waylaying the passer-by writes pathetically to the Queen-Regent to beg for internal peace and work. "These three months I have found no labour, these four days I have had no bread. I thank God that my wife and children have not lived to see my misery. Give us peace, O Queen, that we may work and satisfy the yearning of the soul for quiet and meditation." Does not that come poignantly in a tattered tract of three hundred years ago? I have bought also a nice Bartolus, a sixteenth century edition; and I have, as Felix would say, paged it not without admiration. He is as naturally over-subtle as Williston, but even two hours' half-idle reading convinces one that he had a mind.

Of other things, not much to report. But I must tell you that with the twenty-five dollars' royalties on *Collected Legal Papers* I have fitted up a miners' reading aide in S. Wales, where almost everyone is unemployed, with fifty volumes from Everyman's Library. Their gratitude was almost overpowering. On the whole I think the pleasure of giving pleasure is about the best thing that there is.

And I was pleased because on receiving the notification of my reappointment to the university for the rest of my days, the chairman of our governors wrote that "we build the next years of the School more round your work than that of any other teacher." That made me feel that, on the whole, it is probably better to go on with the hard work of teaching than my dream of a house in the country and endless leisure to write. But dreams are futile things!

My love to you as always.

Ever affectionately yours, H. J. L.

Washington, D. C., Nov. 10, 1930

My dear Laski: Although there has been no intimation from you I must assume that a big volume on *Les estampes de Peter Bruegel* comes from you. So I thank you for a renewal of the pleasures that I thought had died with Rice (former print boss in Cong. Library). I haven't yet quite finished my first examination — but I am much impressed and really interested. (I am not yet reconciled to Bruegel instead of Breughel). His "Devil's Progeny" lives as others that I remember do not. You believe 'em all. Also he was a surprisingly good landscape etcher, before

the great advance with Rembrandt. B. had a fertile brain. I shall know more I hope soon.

I have written my first decisions for this term and expect from present appearances that they will go through.¹ Their only merit is brevity, I hope accurate and adequate — but somehow it put new life into me to write again.

I have received books and essays on legal themes from professors and others — more or less flattering to my vanity — but I was particularly struck by the tone of a N.Y. professor — Llewellyn, that I think I have noticed in one or two others.² They utter harmless things that I should not think could provoke antagonism, and that do not seem to me dazzlingly new, as if they were voices crying in the wilderness — or heroes challenging the world. I say to myself, "Why so hot?"

I am amused by your Irish and the British consul and your Italian lecturer and slightly tremble to hear you talk of "poor old Scrutton" whom I haven't got over thinking of as a promising young man.

I read or rather listened to *Cakes and Ale*. I don't willingly read novels any longer but this seemed different. However, I thought the best thing in it was the end when Rosie explains the charm of Lord George: "He was always such a perfect gentleman." That I thought masterly — like the place in (*Man and Superman*?) where after the genius has explained that his engagement ends his performance and his sister calls him a brute — his girl says, "Never mind, dear, keep on talking" — or words to that effect.

Yours ever, O. W. H.

Devon Lodge, 22.XI.30

My dear Justice: I am ashamed of myself for so long a silence; but I have been simply overwhelmed and have hardly known where to turn. The P.M. dragged me in to try and help to arrange a *modus vivendi* between the British government and the Zionists, and I have been working at it like a slave. What with Webb's pedantic obstinacy and ambiguities, Felix and Brandeis's immovability, and the hectic indignation of the Zionists here it has been a grim business, and I don't know yet whether I have done any good. But much of it has been built upon letting every one talk to me about it and then acting as the honest broker between them, and they certainly *can* talk. I have spent a fortune in telegrams to New York, and at the end of each day I creep wearily to bed wondering if human nature is capable of mutual understanding.

¹ *Klein v. Board of Supervisors*, 282 U.S. 10; *Sherman v. United States*, *id.* 25 (Nov. 24, 1930).

² Karl N. Llewellyn, "A Realistic Jurisprudence — The Next Step," 30 *Columbia L. Rev.* 431 (April 1930).

Of other things, accordingly, not many. I am so glad you like the Breughel (note my spelling); I think I told you how enormously impressed I was by his paintings at the Antwerp exhibition. Then I have been helping a little with the Indian conference — mostly trying to explain the implications of federalism to them. They are queer people — a little extra dose of courtesy makes an absurdly great difference to their outlook, and the trouble with the British is the high degree in which they lack the imagination to see the importance of courtesy. Then I went up to Glasgow for a day to settle a strike and similarly to Manchester. The second I enjoyed, for I was able to give ten thousand men a week's holiday with pay annually and I really felt that the Recording Angel might accord that to me for righteousness. They were dairy workers who in the past had not even had Xmas day as a holiday thro' bad organisation in the industry. And I must not forget to tell you of going to the inaugural lecture of a colleague on law in which he developed with an air of immense daring and originality the three following propositions (I) lawyers who know economics may understand judicial decisions better than those who don't. (II) Judges are bound to be impressed by the mental climate of their generation. (III) Judges ought not to have political ambitions.¹ The chair was taken by an eminent Kings Bench judge who said that for him the lecture opened out great vistas of new thought. Afterwards he told me that he had felt as he listened to the new professor that at last a legal philosopher had been born in England. He (the judge) added that he had just been reading Pollock and Maitland and was astonished to find what good stuff there was in it. Nor must I omit to tell you of a visit paid to me by the father of one of my students, a Plymouth brother. The son had been pleased to report that my lectures did him great good. The father had learned with distress that I was an Agnostic and for my own sake wished to remonstrate with me. He offered (I) to give me instruction in the true faith or (II) to arrange for me to interview the Reverend Thomas Mark Smith, a child of light, a true vessel of the Lord or (III) to pray for me daily. I chose the third course but suggested a weekly rather than a daily prayer as involving less physical strain on him. He was much moved and left with the exhortation that I should (I) wash myself in the blood of the Lamb and (II) distribute some of his business cards (he is a caterer and left me six) among my friends. My dear Justice, is there anything in the world as completely arrogant as the man who really believes that, in his own phrase, he is a vessel of God? I wish I could find words to tell you of his absolute confidence that he was conferring on me the chance of salvation, that God had sent his son to London for this purpose, and that this was, so to

¹ D. Hughes Parry, "Economic Theories in English Case Law," 47 *L. Q. Rev.* 183 (April 1931).

speaking, my last opportunity as he had other souls needing attention. Thank heaven I was able to preserve my gravity and he left convinced of my respectful gratitude. I was at least convinced that Heine was right when he said that the main attribute of the deity must be a sense of humour.

I have read one or two items worth recording. First and foremost the posthumous volume of Parrington's work which even in its fragmentary form seems to me a brilliant performance. I thought him particularly good on the Adams family and on the Knights of Labour people, but over-eulogistic of Henry George who to me always seemed rhetorical small beer and incapable of serious analysis. Then a book called *Corporate Personality* by Hallis with a good account of Kelsen and such-like, and a particularly good criticism of Duguit. I had a piece of luck in getting for review a marvellous modern edition of Restif de la Bretonne's *Monsieur Nicholas* with 500 engravings from people like Moreau *le jeune*, six volumes of about as beautiful a book as ever I have seen. And I picked up from a French catalogue one or two nice items, especially a most interesting attempt by a lawyer named Lavie written in 1770 to relate Montesquieu to Bodin, a book as good as anything below the first rank as I know; a book, too, curiously undiscussed in the literature.

February comes closer and I am beginning to get really excited by its prospects. You will not forget that we dine together on March 8.

Our love to you.

Ever affectionately yours, H. J. L.

Devon Lodge, 30.XI.30

My dear Justice: A grand letter from you which warmed my heart.¹ I was interested by what you said about the operations performed on your draft decision. I yesterday presented a beautiful draft memorandum to Sankey for the Indian comment; he accepted it wholly except for two quite beautiful sentences which, if vigorous, gave, I thought, point and colour to the whole. I did not fight for them, but I felt like one of Brueghel's little devils. I hate this process of emasculation to avoid offence. There are some interests it is a public duty to offend.

I am still pretty busy on behalf of Felix and Brandeis.² Between ourselves the latter is a *very* difficult person. He is intransigent and dominating, and unnecessarily prone to read evil motives into obvious actions. Felix is like clay in his hands, and if it were not for my deep affection

¹ The letter referred to is missing.

² The part which Mr. Justice Brandeis played in opposing the proposals contained in the Passfield White Paper is briefly referred to in Mason, *Brandeis: A Free Man's Life* (1946), 595. See, for a fuller account of the matter, Frankfurter, "The Palestine Situation Restated," 9 *Foreign Affairs* 409 (April 1931); reprinted in *The Brandeis Avukah Volume of 1936* (Rabbi Shubow, ed., c. 1932), 245.

for them both, I think I would have told them long ago to go to hell and see what they could accomplish without my intervention. I can't run daily to the Foreign Secretary because Brandeis has doubts about a semicolon — at some point in a negotiation one has to assume that the cabinet really means what it says. I did not realise before how curiously suspicious a nature Brandeis has. He is extraordinarily profound in his insights, but, I should have said, not quite human in his contacts, with the result that he does not always see round a subject.

Of other things, the most amusing, I think, was a dinner last night with half a dozen of the Prime Minister's colleagues, when business was out of the way, and a good brandy had mellowed them, they began dissecting him and it was like nothing so much as a group of actors dealing with a successful rival. I gathered that he was vain, arrogant, aloof, reserved, theatrical, over-subtle etc. I asked why if he was all these things, they continued to work with him; to which the pretty unanimous reply was that he was really all right and that these were only surface defects. I asked the First Lord³ what he would take to be really serious ones. I also went with Frida to a dinner to meet Virginia Woolf, the novelist. She tickled me greatly; it was like watching someone organise her immortality. Every phrase and gesture was studied. Now and again, when she said something a little out of the ordinary, she wrote it down herself in a notebook. . . . Really it was as good as an opera to see her put up a lorgnette and say in a coy whisper "You write?" "Yes." "Ah, I read so little — the effort of creation exhausts me." I wonder if you ever met her? She is L. Stephen's younger daughter by his second marriage.

It was interesting to hear your feelings about Emerson. I continue to rate him pretty high in the second class. A sweet mellowness of temper, a shrewd and homely wisdom, a real distinction of phrasing. I agree that most of the learning is neither profound nor necessary; but I have always assumed that it was simply a necessary offering on the New England altar of the thirties and forties. And I think there was a big poet in his prose and a judge of character. Of all the Americans of that epoch I think he comes best out of the test of time. So does *Moby Dick* which I reread in bed and thought superb. Did I tell you of the comment of Arnold Bennett on the Hollywood version of the book — that it was Mobydiculous? A really good word, worthy of Lewis Carroll.

I have not read very much. A novel or two, none very startling, a life of *General Lee* by Sir F. Maurice which made him out the biggest thing America has produced, and Einstein's book on *Roosevelt* which I enjoyed with the note that I think T.R. was out of touch with America after 1912 and that his war-activities in the Wilson epoch were simply mischievous. I read Owen Wister on T.R. too, but with the feeling that the talent he

³ Albert V. Alexander, *supra*, p. 1200.

depicts was that of a first-rate megaphone and not of a statesman. I accept the view that he talked well, adding that I never heard him do so in the half-dozen talks I had with him and that Wister reports nothing I could accept as proof. I also reread the *Faerie Queen*, largely on Diana's account and my main impression was vast *longueurs* with now and then an oasis of ten lines. But I went to see *Antony and Cleopatra* and felt it was one of the three or four supreme acting plays I have ever read, at times simply overpowering, and with a subtlety that not even *Macbeth* surpasses.

Our love to you. Please keep very fit until I get to Washington.

Ever affectionately yours, H. J. L.

Washington, D. C., December 19, 1930

My dear Laski: Belated best wishes for Xmas and the New Year and a word to say I have read your essay on "The Limitations of the Expert" with unqualified pleasure and agreement.¹ Many years ago Albert Nickerson,² long dead, a powerful Philistine with insight, said to me that a merit of the English government was that it had bodies of competent experts in the departments, but put a man of the world (or some such phrase) at the top — and I cannot help recalling as slightly relevant that with a similar idea in my head I said in my book that ignorance is the best of law reformers — a paradox looking your way. The discourse is admirable. My love to you all.

Affectionately yours, O. W. H.

Devon Lodge, 27.XII.30

My dear Justice: First of all, our loving good wishes to you for 1931. I hope it will bring you great happiness.

I have had very pleasant days since I wrote last. First of all a brief trip to Paris. I saw much both of people and things. Tea with Briand,¹ a long talk with the philosopher Meyerson, a jolly dinner with the critic Lanson, book-hunting galore, and a marvellous, quite marvellous exhibition of Félicien Rops. Briand was to me like a benevolent snake. His mind never moves directly upon anything. He is really brilliant beyond words, but, I should say, incapable of any of the ultimate sincerities. I had to see him for Ramsay, and it was most amusing to watch him endeavour to discover what my own views of the P.M. were before com-

¹ 162 *Harpers Magazine* 101 (December 1930).

² See, *supra*, p. 417.

¹ Briand at the time was Minister of Foreign Affairs in the Tardieu government.

miting himself to the disingenuous epigrams he was anxious to make. Meyerson is a great man. He takes his job *au grand sérieux* and nothing of the godly comes into it. On that head, indeed, he pleased me much by dismissing Whitehead, Eddington and Co. in one fell swoop as people whose religiosity made it impossible for them to see the real perspective of metaphysical problems. Old Lanson was a delight, especially when he fired up with superb indignation when I said that Fénelon was a much greater man than Bossuet. I told him that B. is one of the illusions of the French mind, the decorative commonplace, just as Mr. Gladstone is with Englishmen. The bookshops were a joy; I bought, I suppose, some fifty or sixty things, none of them extraordinary, but all of them pleasant to have. The most interesting was a rare little brochure of the Abbé de Saint Cyran² in defence of monarchy written before he was sent to prison by Richelieu; and I found, also, some of the Jesuit replies to the *Provincial Letters* which I was *very* glad to have. I also bought a number of 17th century treatises on usury, which were interesting as showing how long the Canonist doctrine persisted in France. I came back to work, mostly with the Indians on behalf of Sankey. In that connection, we went to a great reception by the Secretary of India which, as a mere spectacle, I wish you could have seen. The robes and jewels of the Indians and their wives were like a Titian, a mass of superb, even dazzling, colour. The Indian problem goes slowly and with difficulty. How seriously the Moslems take themselves you can see from the fact that the Aga Khan, who, I gather has the blood of the prophet in his veins, is able to sell the water in which he washes to disciples in the East at so much a pint; and it is kept there in temples as sacred! One or two of the Indians are really first-rate people, especially Sastri³ whom I should reckon among the noblest men I have ever met; but the depth of their religious fervour makes any plan for effective justice between them a matter of extraordinary difficulty. Then I have had a further dose of Palestine which convinced me even more that Moses made a great mistake. I add that your remark about Brandeis is certainly just.⁴ Since these negotiations with the British government began I cannot remember one telegram of his which has been really helpful. All statesmanship is, after all, the power to compromise on inessentials; he digs himself in on what are really matters of no consequence with the passion of a tiger defending his cubs; and that makes him, in my judgment, much less effective on the big issues where he is really entitled to care. He exercises a strange hold

* Jean Du Vergier de Hauranue (1581-1643). The pamphlet, in all probability, was *Question royalle et sa décision* (1609).

* V. S. Scinivasa Sastri (1869-1946), Indian statesman, was at the Round Table Conference.

⁴ The letter referred to is missing.

over Felix, for the latter, who can usually be cool and independent, is in these things simply an echo of L.D.B. He gives orders like an omnipotent Sultan and negotiations do not come to a success in that way. Moreover he treats his fellow Zionists who differ from him almost as criminals, and, as I think, gravely injures his own prestige by so doing.

I was not much moved by White's remark on Jews which you quote. Taking them as a whole they seem to me very much like other people. There is a small class of rich social climbers, the type, I should guess, whom White knew, who are all that he says. But they are a tiny class, and they have the inferiority complex which comes from the horrid conjunction of great wealth and the sense of uncertainty which comes from ostracism. I don't think one can safely generalise about any people; Felix, Morris Cohen, Einstein, Julian Mack, don't fit into any box. I should say that White's remark was less true than most. My difficulty with Jews is their tough resistance to assimilation, their pride in being different, their excessive sensibilities, their intellectual hubris. But I should certainly not accuse them of being selfish in any ordinary sense.

We leave tonight for a week in Antwerp with our Belgian artist friends. It's always a jolly time and we look forward to it greatly.

Our united love and every sort of good wish.

Ever affectionately yours, H. J. L.

Devon Lodge, 10.1.31

My dear Justice: We have just come back from a most jolly ten days abroad — mostly at Antwerp. But we went also to Brussels and Amsterdam and had a real feast of pictures. On the whole, my loyalties remain with Vermeer and Rembrandt's etchings. . . . Do you, by the way, know the etchings of the Belgian Ensor? Some of them seemed to me to be quite definitely of the first order. There is a good book of them which is sure to be in Congressional Library, and it would, I think, give you pleasure. I also fell in love with Jacques Callot¹ — a proof of my ignorance that I did not know his name — and I send you separately a little book about him which at least gives a taste of his quality. His series on War seems to me a better exploration of the Age of Louis XIV than half a hundred volumes. I wish I could send you the vast *catalogue raisonnée* of his work, but it was, alas, beyond my means.

I came back to the conferences on India and Palestine and have been hard at work on both. The latter is all done except for formal registration; I hope Felix and Brandeis will be grateful for a job which has taken infinite pains and ought really to satisfy every decent aspiration to which

¹ *Supra*, p. 609.

they are entitled. The Indian show, at the moment, goes very well.² It has been a perfect delight to work for Sankey, hard though it has been. He not only takes one's points, but he treats one with an eager sympathy which is very moving, and he is always open-minded. On the whole I think the risks we take are right; certainly we could not have sent the Indians back with less. But there is still the difficulty of knowing what will be the attitude of India and the extremists when the draft is in shape. Anyhow, now that it all draws to a close I am glad to have had a hand in it especially as Sankey seems to feel that I have helped him.

Of other things *minora canamus*. I have read much abroad; nothing that can be called startling but much that I have enjoyed. I put first Siegfried's *Tableau des partis politiques en France* which is excellent; I wish that similar books existed for Germany and America. Then Flexner's book on the universities which I think ought to have a very wholesome effect. Trollope's *Eustace Diamonds*, which Oxford has just reprinted, and I agree with Diana that it is among his very best. Then a great dose of Hazlitt who turns out better than ever. Do you know the perfect essay on "Persons with one idea"? That alone ought to give him a title to immortality. I have also been reading the newly-discovered letters of Diderot to Sophie Volland which are, like all that comes from him, full of his quick, vigorous, ardent nature and so thoroughly enjoyable. And lastly a symposium edited by one Norman Foerster on what appears to be the new American hobby Humanism which seems to preach the glory of moderation once you have got enough to be satisfied. I thought the gentlemen who made the book about as complacent a set as I have ever encountered; and I felt that on the whole America can make bigger contributions than this to the future of civilisation.

I'm also pretty busy with writing. An article for the *Yale Law Journal* was finished last night;³ in case it is a secret of those young people I will only say that it left me not without admiration for your opinions during the last twenty-five years. Then a long article half-done on democracy for the new *Encyclopedia of the Social Sciences*, an interesting job to do, but irritating because of the limitations of space.⁴ Most interesting of all, and already done, a piece on Woodrow Wilson for the March number of the *Forum*⁵ (a journal I know not but which will, I hope, pay me \$200) trying to estimate ten years after just where he stands and what he stands

* The Round Table Conference had made considerable progress towards its goal of establishing the principles upon which a federal constitution of India might be based.

³ "The Political Philosophy of Mr. Justice Holmes," 40 *Yale L. J.* 683 (March 1931).

⁴ 5 *Encyclopedia of Social Sciences* (1931) 76-84.

⁵ "Woodrow Wilson Ten Years After," 85 *Forum* 129 (March 1931).

for. On reflection I concluded that his stature had diminished [and] that his social philosophy was out of date even while he was preaching it. But I must not anticipate what I hope you will read.

It pleased me enormously that you liked my article on experts, especially as it runs counter to the fashionable thesis which even Felix (see his Yale lectures) seems to accept.⁶ I prefer the gifted amateur in almost every walk of life, and I can't imagine anything worse than trying to explain to a man like Hoover why one can't handle men as though they were units in an engineering problem. But I don't want to repeat myself. It really gives me comfort as well as pleasure to have your assent.

Of books bought some were pleasant — the nicest, I think, a good lot of the early 17th century French lawyers like Loyseau, and a host of *Mazarinades*. One has pleased me especially because I have found that it was done in London as English propaganda! So unoriginal are our sins!

I have booked my passage on the *Aquitania* for February 18th. It gets very near; and you note that I can now definitely accept an invitation to be in Washington on your birthday.

Our love to you as always.

Ever affectionately yours, H. J. L.

Devon Lodge, 25.I.31

My dear Justice: I have almost begun to know what leisure is, now that the Indian Conference is over. It ended with a heavy burst of hospitality, in which the striking thing was a dinner given by the Indians to the P.M. I sat next to a Maharajah with an income of a million sterling a year, and if there is living a more banal idiot I have not met him. He was a most incredible fellow to watch. He had windows opened and closed simply for the sake of giving orders and drawing attention to himself. Then I was bidden to dine with another Prince who made no less than nine speeches in one evening. Poor Sankey and the P.M. were bored to tears; I enjoyed the first five simply because one never knew just what he was going to say next. Then I have been busy settling some co-operative disputes, a very interesting job. To compile wage-scales in terms of a balance sheet is a good experience for a political philosopher, and as both sides went away satisfied I don't think I can have done too badly at it. I went also to dine with the Webbs. Much good talk, especially from him on the pressure of tradition in an office like his. But though he complained, I felt that, on the whole, he welcomed its pressure because it saved him from the labour of going at the facts for himself. I had a queer lunch with Bertrand Russell. He wants a definite academic job. . . . He remains dazzling; but there has come into the tone of his mind a curious and distressing cynicism which I should have said was the worst possible

⁶ See Frankfurter, *The Public and its Government* (1930), Chapter IV.

attitude for one who wants to teach the young. And I felt that he was prepared to give opinions without thought on almost everything — not the outlook a man of his achievement ought to have. He is very loveable, and obviously very lonely. But he wants to have his cake and eat it . . . I must add a word about a dinner with the German Ambassador who is extraordinarily able and attractive.¹ He told us much about Holstein,² the *eminence grise* of the pre-war F.O. in Berlin; he had all sorts of black-mailing holds on people which made it dangerous to demand his resignation. At last came a foreign secretary with courage and Holstein went. It was then discovered that most of his threats were based on sheer intuition, and that he had a genius for scenting the bad streak in a man's character; but he was quite unable, the Ambassador said, either to tell a good man when he saw one, or to trust anyone. Yet he was undoubtedly one of the people most powerful in fixing German policy in Western matters. I collect one phrase of his I liked — a description of Roosevelt in Berlin on his visit to the Kaiser as "a corybantic Nimrod who always fired his gun and mistook the explosion for a bull's eye."

In the way of reading I have been fortunate. A good book on the need for law reform in England by Claud Mullins. I think he shows that we need a Bentham, that costs, the English law of evidence, the excessive use of juries and appeals, the hazards of uncertainty all represent matters which need careful enquiry. One county court case he gives in detail where a suit for sixty-seven pounds ultimately implied costs of over six hundred. Then Tawney's new book, *Equality*, with which you will profoundly disagree, but which you will, I think, admire for the sheer beauty of its style, and, what always appeals to me, its power in the use of the ironic method. I have also enjoyed a good book on ethics by W. D. Ross, the Aristotle man, called *The Right and the Good*, and an excellent book, quite the best I know, on the Paris Commune by a young American called Mason. I was lent the life and letters of C. W. Eliot by Henry James; but, alas, I found it infinitely dull. One could see that he was a man of enormous organising power. But I thought his genius was clearly for the particular and as James thought it necessary to fill his book with Eliot's meditations on the universal, the result, for me, was boredom. It's no use assuming that the general comments of a man who is big in one line of life are necessarily worth preserving. I urge you, too, to read

¹ Baron von Neurath, *supra*, p. 1286.

² Friedrich von Holstein (1837-1909); his retirement from the Foreign Office occurred at the time of the Morocco crisis, when Bülow, the chancellor, resigned.

a book by an old Harvard pupil of mine, Crane Brinton, on the Jacobins; first it is dedicated to me, which gave me the pleasure of satisfied vanity, and second it really is an admirable study of what may be termed the mechanics of a revolutionary organisation. Not even Aulard has made one see quite so well how the thing really worked. I add the comment that it is really a wonderful experience to see one's pupils becoming people with solid achievement to their credit.

It is now only just over three months till I sail. I hope I may assume that we are going to dine in Washington on your birthday. Nothing else in my American visit matters quite so much as that.

We all three send our love.

Ever affectionately yours, H. J. L.

Devon Lodge, 7.II.31

My dear Justice: I have just passed the first really peaceful week in months, and it has really been a relief beyond words. I'm not sure that it isn't an oasis in a desert, for things seem to be looming up for next month. But at least it has been peace. Mostly I have been reading Tocqueville for a lecture I have to give next week at King's College.¹ It has been frightfully interesting. One of the problems one has to solve in the history of ideas is the changed attitude to America in Europe after 1800. Until then it clearly was paradise, and no one doubted that any Utopian ideal must be placed in America. After, and until Tocqueville no words were too harsh for it, and Europe wanted mostly to hear the kind of thing Basil Hall and Mrs. Trollope seemed to give. I think the reason is that America was democratic, that democracy meant 1789, and that the more it was attacked as democratic the more the "classes" could take comfort that in resisting popular reforms they were resisting democracy which threatened all decent ways of life. That's why I think Tocqueville so remarkable. Everything about him was patrician in temper; yet by a deliberate effort he made himself see the significance of the new world and appreciate its possibilities. With all his limitations, one could make out of his book a political anthology about as fine as any in the nineteenth century. I was amused to find in looking at the material a speech by Sir R. Peel urging Conservatives to read the book as a warning against democracy, mainly, I think, because the phrase "tyranny of the majority" which Tocqueville invented fell pleasantly on Peel's ear. It was also interesting to see how completely he had anticipated all that is good in the general part of Bryce's *American Commonwealth*. Outside this, I have read mostly international law. And this leads me to the reflection that there is no juristic literature which so tempts the writer into

¹ Printed in F. J. C. Hearnshaw, *The Social and Political Ideas of Some Representative Thinkers of the Victorian Age* (1933), 100.

eloquent turgidity. With the one exception of Westlake, none of the English books of authority seemed to me first-rate or even closely reasoned. I was more impressed by the French, and still more by the German. But I should have said that the whole subject wanted a man of genius to devote himself to its philosophic foundations. I also re-read Maine's *Ancient Law*, and fell again under its inexhaustible charm. If I had to name a book to tempt the outsider into a sense that jurisprudence was a great subject I think I should ask him to read Maine and then deny greatness at his peril! Of other things, I read Galsworthy's new novel² which has been highly praised, I think wrongly. Its theme is the nobility of strong, silent men who do their job and accept the loss of privilege without repining. But there is a little oasis of insight in a vast sea of sugary sentimentality which I found really painful. Curious to reflect that ten years ago he seemed on the way to becoming an English classic and that now he appears almost wholly devoid of anything but a thin and vapid sentiment. Whether it is that the atmosphere is more hard or that he has lost skill one once felt I do not know. But I would give the whole of this novel of his for one good Jeeves' story.

I have also had a book-hunt in the Caledonian market where one can buy anything from a seventh-hand dress suit to packets of seeds for a slum window-box. I don't think I have ever emerged from an expedition so wholly dirty as from this. But I found the remains of a library belonging to a descendent of a Huguenot exile, and it yielded treasures at a shilling a piece. I got three rare works by Jurieu, the Huguenot pastor of Rotterdam and the opponent of Bayle. I got three contemporary critiques of Montesquieu, one of which came from the pocket of an overcoat which I can only describe as really mouldy; and I got a perfect first edition of Rousseau's *Lettre à M. d'Alembert*. It was really a good afternoon's hunting and worth the necessity of sending my suit to be cleaned (at Frida's stern instance) immediately afterwards.

One man came to see me during the week whom I would have liked you to meet — the French writer Daniel Halévy. He was the real Frenchman of legend. He is going to write a survey of contemporary England³ which he was visiting for the first time in fifteen years. He would visit London, one industrial town, one mining village, one country town, Oxford and Cambridge. He wanted to interview (for the chapter on political ideas) one liberal, one Tory and one socialist. For literature he wanted to see one critic of the Right and one of the Left. I tried so patiently to explain that no such animals existed. With equal patience and exquisite courtesy he explained that they must exist since all French critics could be so divided. I said that a man could be a Tory and yet

² *Maid in Waiting* (1931).

³ The survey, if completed, has not been identified.

appreciate Shelley's *Masque of Anarchy*. He thought it impossible. When I went on to affirm that old George Saintsbury who was a Tory of the School of Walter Scott adored the novels of Dickens he said that as a people we were incapable of consistency; and I could see the notion of *perfidie Albion* coming definitively into his mind.

I must end with a tale illustrating the glorious use of the British language by native Hindus. My friend Coatman⁴ used to be inspector of prisons in India. Visiting the prison of Udaipur, he was shown round by the Babu superintendent. They came to the condemned cell where a poor, shivering prisoner was crouching. Coatman asked about him. "He is to be hanged tomorrow," said the Babu. Pause. "He is innocent." Pause. "That is why he looks so peevish."

My love to you, my dear Justice. I wish I could drop in on you for a talk.
Ever affectionately yours, Harold J. Laski

Devon Lodge, 10.II.31

My dear Justice: Forgive my silence. I have been in bed with a bad dose of influenza, and am only just about again. This is merely to say that I leap at the chance of staying with you. I shall come on March 7th and catch a late train to New Haven on the 8th. It will be a joy beyond words to be with you.

Our love as always.

Ever affectionately yours, H. J. L.

Yale Law School, New Haven, Connecticut, 2.III.31

My dear Justice: A very hurried note to ask whether it is all right for me to turn up at 1720 on Saturday afternoon and stay until a late train on Sunday night? I am more excited by the prospect of this visit than anything I can remember in years.

My love as always.

Ever affectionately yours, Harold J. Laski

Yale Law School, 16.III.31

My dear Justice: I ought to have written to you last week; but I have been terribly driven and have not yet emerged from the welter of correspondence this visit seems to entail. Yet I must put on paper my joy at seeing you again. They were exquisite hours, among the very happiest that I have ever known. And to have been with you on that day will be a memory I shall always cherish.¹ *Forsan et haec olim meminisse juvabit.*

⁴ John Coatman (1889—), after many years as a civil servant in India, had become Professor of Imperial Economic Relations at London University in 1930.

¹ Holmes was ninety on March 8.

I wish I knew how to tell you what friendship with you has meant to me. But it is one of the things that lie too deep and too intimate for words.

The days pass very swiftly. It is extraordinarily interesting here.² The level is not, I think, quite as good as at Harvard, especially not in the Law School. But they are most attractive people, as eager as could be, and I enjoy them. I don't know what they make of me; but I seem to keep them excited, which is, after all, the teacher's main business. If I had to criticise I should guess two things (I) too much university interest in building and too little to [*sic*] men. (II) too much attention to points of administrative detail. They ask less, has X learned to think, than has X obtained a sufficient number of credits to entitle us to assume that he has learned to think. And this last involves a pretty vast structure in which the teacher gets buried unless he is painfully careful. The boys read too little for themselves, and what they read is too much in bits. The result is that they aren't accustomed to the job of tearing the heart out of a book or to thinking on their own. It may be that English experience gives me a wrong perspective of approach, but I should have said that my lads in London were much more critical and sceptical than the lads here because we throw on them a much greater onus of responsibility.

Majora cano. I had two delicious days with Felix this week-end. His powers are to me more mature and more creative than ever, and his mind far more balanced. Indeed I am tempted to say that of all the younger Americans he has the best instrument at his disposal. I have, too, seen a little of Morris Cohen. There, again, new sense in me of impressive power; and delightful new humilities in him, new doubts, and new kindness. I heard him lecture here on Hegel's logic — a quite remarkable analysis, simplification without excess, a personal point of view, a brilliant dialectic, and a power of evoking enquiry which one could not but admire. Of other things the most enjoyable was a journey by air from New York to Boston. It was quite thrilling. The sense of space is intoxicating; and the view in its grandeur gives a new element of drama to life. Long Island Sound at 10,000 feet, and Boston at nightfall with a million lights are unforgettable. In the cockpit of the aeroplane one feels very little and negligible; but the inference I drew from the almost complete balance of the pilot, the regular 140 miles each hour, the easy ascendancy over the clouds and rain, was of a mastery over nature which makes the result of rebellion against her limitations a mighty achievement.

I have read but little, as letter-writing has kept me busy. I danced through Jerome Frank's book³ which I thought made a point though with

² During the second term of the academic year Laski gave two courses in the Yale Law School: an Introduction to Legal and Political Theory, in the first year curriculum, and a course in Administrative Law for advanced students.

³ *Law and the Modern Mind* (1930).

insensate exaggeration. What I did like in him was his skilful dissection of Pound's undistributed middles. And I read Beard's *American Leviathan* — a good description but one which selection would have made into an *Iliad*.

My love to you as always. One of the best things about being here is the sense of your proximity. *Ever affectionately yours, H. J. L.*

Washington, D. C., March 17, 1931

My dear Laski: Your letter gives me great happiness. Few things possible could give me so much. I will say no more except that it came just as I was asking myself whether it would not be better if I should die now — (without assistance from myself — *bien entendu*).

All my leisure time, *i.e.* all my time out of Court has been taken in writing letters and the end is not yet — but I have managed to write a little decision, distributed today and accepted by all but three not heard from yet. On Sunday the 15th most of my old secretaries turned up and made me a charming call. They proposed that next summer Hopkinson should paint a second portrait — half length, sitting — for the new Court house — which will not be much of a job and will be pleasant.

Of course your lads in London are more critical. They live in a thicker atmosphere of culture than any large body of men here — not only in the society they meet but in what comes through their eyes. Perhaps we spoke of that. I have read nothing but letters but have listened to the third volume of Parrington — posthumous about the rise of critical realism in the U.S. or some such title. There is a touch of radical dogmatism in his tone and speech — the catch words catch him — “exploitation” — “acquisition” &c. He cares most for those of his way of thinking — &c. &c. but he has a great deal of keen insight and I am sorry that solitaire going on while I listened, somewhat blunted the impression of his words. At the end of this week, or rather on the Monday following it, we adjourn for 3 weeks which will be a relief and let me catch my breath. Now I am panting all the time.

In my turn my love to you — always.

Affectionately yours, O. W. Holmes

Yale Law School, 23.III.31

My dear Justice: Your delightful letter gave me great joy. The boys, I gather, gave you their *Journal* on Saturday, where I hope you discovered my real birthday present.¹ One thing I must say. It was difficult

¹ See, *supra*, p. 1303.

to present the appearance of insight without the display of that intimate affection unsuitable for a learned journal. But I count on you to read between the lines.

I keep as busy as ever. I went to Williams and to New York — the latter particularly brightened by a long evening with Morris Cohen. I was immensely impressed first by his integrity of mind and second by his intellectual maturity. It is a great thing to meet that kind of mellow wisdom which handles ideas as tools and is not wedded to private dogmas. His insight is hardly less remarkable than his learning. I must add a word of a visit to his parents — two old Russian Jews well in the eighties. Neither speaks English and they have a tiny three room apartment on the East side. I told them of my pride in Morris and the esteem in which we all hold him. The old lady's ideas [*sic*] became twin fires as she said "I am poor and ill, but when I think of my son I bless America for making me the richest woman in the world." Do you mind if I envied America that? I also spent an hour with Walter Lippmann, but not very profitably. I think wealth has done two things to him. A good deal of his sensitiveness has gone. He is interested in external things, queer little worthless comforts *e.g.* a bad display of temper because the servant forgot a cup of coffee he ordered. And he has arrived at the stage where he is not eager to take intellectual risks. . . . I found that he had ceased to read much outside modernities and he lacked a sense of perspective. He lives in the immediate moment and is not poised about it. I also had a good talk with Julian Mack whom I really like. He isn't, heaven knows, a big mind; but he is full of capacity and he has a nature generous and kind beyond praise. To see his face light up when he spoke of you and Felix warmed my heart.

In the way of reading I have mostly been at Morris Cohen's book.² It is extraordinary in its range. Now and again I demur, but, on the whole, I do not know another living American who could have done it. The range and temper are in the great tradition. I also read, without conviction, Jerome Frank's book. I thought it clever journalism, but no more. Really his case is one for more judges like Holmes, J. rather than for an attack upon the pursuit of logic in the law, a more conscious awareness by the judge of his bias and his limitations rather than a disavowal of the possibility of legal principle. I also read, for my lectures here, Maine again. It does strike me after ten years as quite obviously a masterpiece. Take all that research has done away, and the power to state principle, the easy grasp of masses of detail, the ample-mindedness are extraordinary. All of which reminds me to say that he and Frank and others put in my head the notion that most legal writers exaggerate enormously the place of custom in law. I should like to bet that commercial practice

² *Reason and Nature* (1931).

apart about two-thirds is the outcome of judicial selection and that θέμιστες are what gives custom its sharpness and not *vice versa*. A big theme for a letter but I want to put it only dogmatically, reserving the right to dwell further on the matter.

And two other minor things. Wherever I go, I think I see a real intellectual renaissance in America. There is a spirit of critical enquiry abroad which it is quite refreshing, even exciting to witness. People are sceptical about inherited values — always the beginning of wisdom. Against it I put a curious passion for taking pleasure externally rather than internally. A man says at dinner "What shall we do tonight" not "what shall we talk about?" I wonder how few things like the radio and the motor car are responsible for that. Materialise the source of pleasure and you destroy the faculty for inner satisfactions. Wherefore you lose the pleasure of reflection by asking others to do things and think things for you; and to the tired mind after a day in Wall Street it is the easiest way. But I am sure that mental breezes blow from within outward.

My love to you. The very thought of you as near is my main consolation at my distance from Frida and Diana.

Ever affectionately yours, H. J. L.

Yale Law School, 6.IV.31

My dear Justice: A delightful letter from you last week warmed my heart.¹ I am glad you liked the lads from the law journal. They came back lyrical with excitement, and each came alone to my room to give his separate version of the event.

Since I wrote last, my main experience, and fascinating it was, has been a week in the Middle West. I had not been there since 1915, and then only for two days in Chicago. This time I went to Chicago, Minneapolis and Columbus, and thoroughly enjoyed it. Impressions pour in on me so that it is difficult to select. First, I think, a most attractive simplicity in the people. It might easily be social crudity, but I am convinced it is not. On the contrary, it is a simple pleasure in simple things which I found charming. They are, of course, unsophisticated [*sic*] compared with the East, and curiously provincial. But there is a healthy earnestness about them which I could not but admire. Then I felt the immensity of distance from Europe. Our problems, clearly, do not even enter their consciousness. They are not reported because they do not interest. They are not even quite certain that the East really exists; and their minds are definitely turned Westward. Then I noted a curious faith in mass action, a sense that the more people are alike in taste and opinion and feeling, the better things will be. If a man wanted to condemn his neighbour the

¹ The letter referred to is missing.

usual ground was the possession of a strong individuality. He was irreligious, or socialist, or pro-negro, or crazy about books and pictures, or did not go to the movies. It was a different civilisation from anything I have ever seen and I enjoyed every moment of it. You will, I hope, congratulate me on finding in Chicago Knolles' translation of Bodin (1616) a very stately folio, which belonged to Ellesmere the Chancellor, for ten dollars; I would cheerfully have paid seventy-five for it, as it gets increasingly rare. I lectured twice — once at Minnesota and once at Ohio State and perhaps because everyone was kind to me, I thought the standard there compared pretty favourably with Yale. I also spoke in New York with Redlich on parliamentary government to a show called the Foreign Policy Association.² Redlich was charming, but suffered from the historian's fallacy that the *is* is the *inevitable*. Now I have peace until the week-end when I go to give a lecture at Bryn Mawr. I must add that wherever I went interest in your birthday was profound. I think it would make you really happy to find how widespread is the affection for you among men whom you yourself would respect. At Minnesota, for instance, the Governor,³ a silent, able Swede actually unbent when I said I had been with you on your birthday and said that his party (farmer-labour) had a confidence in you which they extended to no other person on the bench.

I read much while away as the journeys were long. First, and for the first time in years, *Gulliver*. Really a great book; and the Academy at Laputa is so like research here in the social sciences that Swift emerges as a prophet. Then Cardozo's essays⁴ — rather slighter than I expected and at times excessively mellifluous, but all of them, none the less, having point and pungency. Then P. G. Wodehouse's new novel — *Big Money* — which I adjure you to read; adorable farce which made me the cynosure of the Pullman through my inability not to roar with laughter. And a Trollope called *Ayala's Angel* which was quite charming and in his best style.

I expect you heard of Arnold Bennett's death. It moved me a good deal for I used to see much of him. He was a very generous soul, full of kindly wisdom, and I think three or four of his novels have a permanent place in English letters. He had taste, too, for pictures, wine and many other things. He first made me see the curious power of Gauguin and first made me realize the defects of Rodin. That's the worst of distance. It

² *The Decline of Parliamentary Government, Discussed by Harold J. Laski and Dr. Josef Redlich, March 28, 1931* (Foreign Policy Association, Pamphlet No. 74, 1931).

³ Floyd B. Olson (1891–1936), Farmer-Labor Governor of Minnesota, 1930–1936.

⁴ *Law and Literature and Other Essays and Addresses* (1931).

insulates you from talk which comforts one. If I could have half an hour with Frida or H. G. Wells and talk of him I should feel less lonely about it. For I cling to my friends.

Do you know yet when your Court stops for the term? I want, if I may, to have another week-end with you either at the end of May or early in June, whether at Washington or Beverly Farms as you think best. I can't, alas, do it before. But I must have one more glimpse of you before I sail.

My love to you as always.

Ever affectionately yours, H. J. L.

Washington, D. C., April 12, 1931

My dear Laski: To answer your last question first. We adjourn for the term on Monday, June 8 if nothing changes — and I should expect to head for Boston on the following Wednesday — June 10. Except on days too near departure and arrival to be consistent with making you comfortable, you always will be welcome. I should be much disappointed if we didn't have another time together.

The sittings begin again tomorrow, I believe with an important case between New Jersey and New York about taking water from a river¹ — in which the Chief can't sit and that I fear may mean that I shall have to take it to write — but I can't tell about that yet. I haven't had the leisure I hoped for — one never does — but still I have had a little and some charming drives in the parks and by the river. The apple blossoms around the basin are out today and the place is packed with automobiles. Also some wonderful white magnolias &c. but I am afraid such details don't interest you. My secretary has just finished reading to me the *Maritime History of Massachusetts*, an enchanting book. After ending it last night we turned to your recommendation — Wodehouse — *Big Money* — and I have roared over all that I have heard. I should think it was one of W's best if it doesn't fall off. At odd minutes I am tucking in Cohen's *Reason and Nature* — but that I must read to myself as I get a chance. My only criticism so far is that when talking of particular impressions and universals, he doesn't think of the composite photograph — which seems to me more than an analogy — a type of the process. These most frequently recurring elements make coincidents and therefore deeper marks and you get a generalization mechanically achieved without any bother about particulars and universals.

I heartily agree with his repudiation of the irrationalists &c. — but speaking only as a bettabilitarian and within the limits of our very finite experience I have no faith that reason is the last word of the universe.

¹ *New Jersey v. New York*, 283 U.S. 336 (May 4, 1931); opinion by Holmes, Hughes, C.J., and Roberts, J., not participating.

I know nothing about it. I have no prejudice against a miracle — but I will bet a dollar to ten cents that any miracle alleged to have occurred within the world of our experience didn't come off. I am sorry to have got only less than half way through Cohen when the sitting begins again. I am much interested by your impressions of the middle west. They sound plausible. My secretary comes from there — but discloses from time to time a critical judgment that I have not exactly measured. Speech there, as elsewhere here, I think has degenerated — largely through the obliteration of the consonants. Our crier opens court excellently in other respects but he says The Unihd (this letter is H) States of America.

My blessings on thee, lad.

Affectionately yours, O. W. Holmes

Yale Law School, 20.IV.31

My dear Justice: A grand letter from you cheered me considerably, for I have been feeling rather badly homesick and forlorn. Time is a definite category at three thousand miles distance from Devon Lodge; I realise the gay agony of devotion more than I thought possible. But really I am having a most interesting time. I had a great week-end in Philadelphia where I saw a superb collection of French pitcures in the house of one Barnes¹ — Renoirs and Manets which took my breath away and a Cézanne which was like a piece of the sun. Then a week-end in Cambridge mostly with Felix, but with a grand interlude with McIlwain when we talked political theory and found ourselves obviously right because we agreed on things. I dined too with the *New Republic* and felt they were as solemn as a gathering of Baptists met to do justice to the Scarlet Woman of Washington. Felix is in grand shape. Really the lad's personality is electric and I sit watching its play in happy admiration. For you and him alone I am amply repaid for this visit to America. Pound I have not seen; but having read his new book² I don't think I want to. He seems to me to have reached the stage of regurgitation and it read like a pale edition, faint and wan, of his papers of fifteen and twenty years ago. And looking at the new law school I thought he had a bad attack of the *folie de grandeur*. Teachers oughtn't to live in palaces. They get interested in buildings instead of their subject. I am for luxurious simplicity not for complicated luxury and there really is a difference between them. I also had a good hunt round Goodspeed's and found a nice cheap set of John Q. Adams *Diary* which I have always wanted to possess. He was the best of all that race and a fellow whose character I admire the more I read him. On Wednesday I am off to Cornell, which I have never seen,

¹Albert Coombs Barnes (1872–1951), inventor of Argyrol, educator, and renowned collector of modern art.

²*Criminal Justice in America* (1930).

for three days, an exciting thing for me as they have a famous collection of French Revolution pamphlets which I am anxious to look over.

In the way of reading I have some notes to make. I finished Morris Cohen with much admiration. The essay I find most hard to follow is the one on Natural Law which does not seem to me to end. The best, I think, within my field of competence is the one on History and Value, an extraordinarily neat piece of thinking. His learning and dialectic power are admirable. It isn't, I feel, a mind of original insight but it has an amazing power to deal logically with what it does see. Then I read Senator Lodge's letters and the *Life of Henry White*, and had a most unpleasant picture of him as a dubious intriguer whose hatred of Wilson carried him to lengths which sometimes overstepped the bounds of decency. I also thoroughly enjoyed a novel by Willa Cather called *The Lost Lady* which seemed to me to have poise and balance and an attractive simple dignity. And I must mention a topping book on Montesquieu by a French man named Carcassonne which deals with his relations to the problem of the French Constitution in the 18th century and makes one see admirably the truth of an old hobby of mine that the great man of a generation is always the peak of a mountain range who gets picked out because he is saying magistrally what the generation is wanting to hear. That was true of Hobbes and Locke, and I think Rousseau less started romanticism which is in Molière and, in a sense, in the placid egotism of Montaigne, as gave it its letters of credit. And I read the diaries of John Bright and marvelled that a man who so moved his generation could be so dull within fifty years of his death. I suppose it is merely changed interests, though I can read old Pepys and Saint Simon and even Fanny Burney pretty exhaustively. And the *Oedipus Coloneus* and the *Antigone* which I swear are consummate art at a level of constant grave emotion quite unsurpassed. Old Henry Jackson of Cambridge always used to say to me that a real appreciation of Greek depended on whether one understood that Aeschylus was the biggest of the three. As he interests me the least I suppose that means that I do not appreciate Greek. But except for the *Persae* I think I would give most of him for almost any play of the other two. I nearly forgot to add that I also found a (to me) unknown P. G. Wodehouse on a railway stall entitled *Jill the Reckless* and cracked my sides over it. Quite unquestionably he is the best creator of unadulterated nonsense alive today. There is in that book the picture of a young man going to meet his stern mother at the station accompanied by two friends which is for sheer power to evoke laughter in my judgment unsurpassed in literature.

You meanwhile are deciding I suppose whether New Jersey is to thirst or New York and whether that admirable young Mackintosh is fit to be

the citizen of an America which digests Mr. Otto Kahn quite painlessly.³ I am for Mackintosh on the admirable grounds upon which Sydney Smith defended Catholic Emancipation a century ago.⁴ I expect you are finding constant glories in this superb spring. Even I notice the magnificence of the magnolias on every hand and the willows in their new green are singularly moving.

How would it suit your plans if I came down to Washington on Friday May 22nd and stayed until the Sunday? If that fits your household I needn't say that it would be grand for me.

My love to you as always.

Yours ever affectionately, H. J. L.

Yale Law School, 11.V.31

My dear Justice: I ought to have written earlier to tell you how glad I am that I may come on the 30th.¹ It will be the culmination of my stay here. I add that I shall try to steal one day with you in Beverly Farms before I leave on June 17 so that we can drive out together. *Haec olim meminisse juvabit*; but we can talk of this when I come.

I have been pretty busy since I wrote last. A week-end in Cornell, one with Felix, and four days giving the Weil lectures in North Carolina.² It has all been very exciting to me, though a little tiring. Cornell I shall long remember because I met there Carl Becker. He is really superb — a mature scholar, with a width of interest and a tolerant maturity that make talk a joy. And he shares my passion for the French 18th century, has the right contempt for Bossuet, and the proper realisation that Diderot is the biggest force of the age. N. Carolina fascinated me — an oasis of liberalism in the Southern desert. Here was a body of men who understand that ancient memories can be futile as well as precious and see the need for new thought and new energy. I must add that the Law School there was very good, and it was moving to me to see your picture (a photograph of the Hopkinson portrait) in the place of honour over

* In *United States v. MacIntosh*, 283 U.S. 605 (May 25, 1931), a majority of the Court held that under Congressional statutes relating to naturalization, an alien who was unwilling to take an oath of allegiance without reserving the right to decide for himself that a particular war was morally justified, was ineligible for citizenship. Holmes, Brandeis, and Stone, JJ., concurred in a dissenting opinion of Hughes, C.J.

⁴ In Sydney Smith's *Peter Plymley's Letters* (1807) his plea for Catholic emancipation was based largely on the thesis that the enlightened self-interest of England required that Irishmen should be her friends.

¹ Two short notes, one from Laski of April 28 and one from Holmes of April 29, 1931 are omitted.

² Later expanded and published as *Democracy in Crisis* (1933).

the Dean's desk in the faculty room. I liked the students too — lads with charming manners and an evident anxiety to acquire not only information but the way of thought. Clearly the South is in for a bad time unless it can tame to social purposes the vast industrial revolution that is taking place there; and the impressive thing about the faculty is its sense that the university must play its part in preventing the catastrophe of a hundred years ago being repeated through absence of social purpose in the plan. Of course the difference in temper from the North is astounding. It comes out in the softness of speech, almost clinging manners, the amazing and excessive deference to women, the tendency to look backwards for inspiration, the sense that they are of different clay from the Yankee. And I should have guessed that they suffer much from intense religiosity which clouds their minds and makes them feel that the Lord will provide without undue exertion on their part. I also had (in New York) a most charming dinner with Cardozo where we had much talk of you. He is a very beautiful person, with a combination of penetration and sweetness that are unforgettable. Morris Cohen was there; and I much enjoyed Morris's defiant dogmatism and the gentleness of Cardozo's footnotes of dubiety. Certainly he is among my half dozen American candidates for my corner of heaven or hell. I met there, too, Jerome Frank whose book I think you know. He is pleasant and earnest, but, I should have guessed, rather a muddled person, though attractive through it all. And I met Charles Burlingham³ whom I thought wholly delightful in every sort of way. His views on Felix went straight to my heart.

My love to you eagerly. I shall count the days till Washington.

Ever affectionately yours, H. J. L.

Yale Law School, 11.VI.31

My dear Justice: I have waited to write to you until I felt you had really settled down in Beverly Farms. I need not tell you how delightful those two days were. I came to America primarily to see you, for no friendship I have ever had has given me the same beauty or exhilaration; and these two brief visits to Washington have made me feel even more intensely what a happy day for me it was when Felix brought me to Beverly on July 10, 1916. Thank you again and again.

May I raise one or two things that come out of our talk. (I) *A propos* of the Bent book about you,¹ you will, I hope, send me a few words saying that you agree that Felix is the best person to do a really authoritative account. I build a great deal on this. (II) I think, too, that you should

³ Charles C. Burlingham (1858-), distinguished leader of New York's admiralty bar and sage student of public affairs.

¹ In 1932 Silas Bent published his book, *Mr. Justice Holmes; A Biography*.

leave the bound volumes of your decisions and such papers to the Harvard Law School. That ensures their fullest use. (III) And the Poe ms to the Library of Congress. That is its proper home. (IV) But I want to have, at least for my own life, your copy of *The Common Law*.² That, with Maitland, was my first real introduction to scholarship, and it is full of precious memories for me. I should, when I die, put it in the Maitland Library at All Souls'. But, while I live, I want to have it as the embodiment of my own ideal of scholarship. Don't, please, think me interfering in putting down these things. You know the motive of affection from which they spring.

I have had some pleasant days lately. A charming visit to Eugene Meyer, where I saw a bust of his wife by, I think, Bourdelle³ which was magnificent. Then two days in New York with a good dinner at Charles Burlingham's. Now I am clearing up here. Tomorrow I go off to Felix until Monday; then to New York (at the Commodore); and on Wednesday I sail on the *Aquitania*. I am very anxious to be home. The sense of being with Frida again is magical. But I hope Felix has arranged that we shall run over to see you while I am with him. Of course, as soon as I am home, I shall resume writing to you in the old way.

My best love, my dear Justice. I cannot put into words how precious are the memories you have given me.

Ever affectionately yours, Harold J. Laski

Beverly Farms, June 20, 1931

My dear Laski: When you left I wondered if I ever should see you again — but such inquiries are unprofitable. About that time I was feeling very feeble and finished — whichever way I look here there are only ghosts and memories. But whether I am recovering from more fatigue than I realized or what it is I don't know, but I am getting back something of a wiggle. People call — Mrs. Beveridge — sweet creature — with 2 fresh books from Paris — *L'après et splendide Espagne* — Camille Mauclair — bully talk about pictures — and *Décadence de la nation française* (R. Aron and A. Dandieu) which the title makes me not want to read. The two JJs. Hand lunched here yesterday and were in better talking condition than I was.

Hopkinson who is going to do another portrait of me, sitting — probably not full length, is coming this p.m. — and I have driven to many of my favorite haunts — only to the outskirts of Rockport as yet, the

² Holmes's last will contained no specific provisions on the matters referred to. Holmes's executor, however, gave the Justice's copy of *The Common Law* to Laski, and Laski in turn gave it to the Harvard Law School in 1940.

³ Antoine Bourdelle (1861–1929).

journey being a little long for me. I must try to resume a little walking. Now, I hope only for > 6 mos. disuse, I can go but a few steps. But the doctor looked me over and said arteries A-1 — heart O.K. and urine satisfactory. Forgive these medical details. I still like to live though I awaited the doctor's answers I think without a quickened heart beat. We are rereading the *Romany Rye* having finished *Lavengro* and I have read a striking little book that I should like to hear you talk about: *The Impending Storm* by Somerset De Chaivre — a boy of 18. To my ignorance it seemed remarkable.

The *certioraris* have not begun to come yet — and I am idle and worthless. I breakfast upstairs to avoid climbing, so far as I can — but this is under the dictatorship of Mary¹ who seems to think it a wrong to her if I do anything for myself.

Ever, dear boy, affectionately yours, O. W. Holmes

Beverly Farms, Massachusetts, July 25, 1931

My dear Laski: It is so long since a letter has come from you that anxiety begins to set in. But probably it only means that your hands were more than full on your return. I will wait, not speculate. With me things are going well. I think I must have been tired on my arrival here. I meditated on death — but I do so no longer. (I don't mean suicide, of course, but the imminent cloud.) I see slightly more people than I want to see but generally individually welcome, and my secretary reads copiously to me. The other day we finished *Our Mutual Friend* and now are deep in *Vanity Fair*. Separately I have tucked in Plato's *Laws* &c. &c. The *Laws* seem somewhat remote, but has fine *aperçus* in it, and is as despotic as even you could wish (if Laski were at the head). We have reread *Lavengro* and *The Romany Rye* — with somewhat abated enthusiasm. I was rather thrilled by Camille Mauclair — *L'âtre et splendide Espagne* — with fine talk about Goya, Velasquez and El Greco and about places and the moors. Also by V. Sackville-West — *All Passion Spent*. She is a very remarkable woman — when you take this — and her poem, *The Land* — and, unless I am confused, some book of travel in Persia¹ to say nothing of *The Edwardians*. Talking of books — I recur to some possible book about me after my death. While Felix seems to me the man for the law part I can't help thinking that there well might be another part dealing with the old Yankee that could perhaps better be managed by some other Yankee. I should think Palfrey would be good to advise

¹ Mary Donnellan was the devoted and imaginative manager of Holmes's household until his death.

¹ *Twelve Days; An Account of a Journey across the Bakhtiari Mountains in South-western Persia* (1928).

with. He is my executor and knows the ropes. I blush to assume so much interest in me — nor do I expect it — but I make the suggestion in case. I recall our times together with delight, and when I go through Rockport never fail to cast a reminiscent look down the road by the harbor side whence you radiated literature for two years. I like that drive superlatively but it is a little long for me.

I have pretty completely given up walking, and seem none the worse for it.

Now for *Vanity Fair*.

Affly yours, O. W. H.

As from Devon Lodge, 6.VIII.31

My dear Justice: Let us resume operations! I should have been ashamed of so long a silence, had it not been that I knew you would understand. From the day (a very wonderful day) that I got home until we came abroad on July 31st my life was one mass of work. There were the royal commissions to which I belong.¹ Then Sankey roped me in to do a heap of things for him about the Indian Conference. Then university committees *ad nauseam*; and I who had hoped just nicely to avoid university examinations found that one of my colleagues had taken ill and I had to do my share after all. Indeed, I think I did more work in the month after I came home than I did during all the four I was in America. Now, however, it is really perfect peace. We came abroad just a week ago today, bringing the car with us and motoring on from Calais. A night at Rouen, one at Chartres, and after four days with some French friends near Tours, we are now staying for I expect about a fortnight at Amboise. We overlook the castle (a miracle) and the river and the views are quite beyond words. Each day we have motored genially round. The thing of all things that I have seen so far, after the Cathedral at Chartres, is Chenonceaux. That literally trembles with big moments. It is not only Renaissance architecture at its most efflorescent. The pictures, the situation, are all so completely blended into a harmony. And one understands better the spaciousness of the sixteenth century for having seen it. Only less lovely is Blois: the room there where the States-General of 1576 were held, and in which Bodin sat, is really a masterpiece of proportion made to produce the effect of massiveness. The whole countryside gives one a mass of ideas. It is clear, that in a full sense, a French nation, and nationalism, could not have been born. It is clear that these noblemen thought of themselves as each a state, going forward, if possible, but, if not, at least hanging on to what he held. It's also interesting to see how the province

¹ At this time Laski was serving not only on the Commission on Ministers' Powers but on the Departmental Committee on Local Government (see, *infra*, p. 1464).

is in a literary sense still the underlying reality; the department has all kinds of traditions, but it has not built itself into the unconscious bones of the people. Yet now it is almost as old as the province itself! It is amazing, too, to see a people to whom equality means something so substantial as to the French. Talk to the man in the garage, or the peasant in the field, and he speaks to you with a vigour that is remarkable. At one little town, Chançay, about six miles from here I saw the Mairie, with the village registers going back in a complete series to 1573. I opened up two historic years — 1715 when L. XIV died and 1789. The entry in the first among "*choses notables de l'année*" is that there was a thunderstorm worse than any known since 1668, and in 1789 that the grapes (it is the Vouvray country) were of admirable quality and brought a high price. That shows the truth of Jane Austen who could write her novels without even a glimpse of the Napoleonic wars.

Of reading, I have not much to record; I have had too little time. I read with real delight Glotz's *Cité Grec* which is the best thing of its kind I have read except Zimmern's book, and in a sense better than Zimmern since, without the latter's enthusiasm, it is a more balanced picture. Then I read the final volume (some years old) of Geny's *Science et technique en droit privé* from which I gather that the natural law of the Thomists is the essential postulate on which all law is based. And I read a novel by Clemence Dane called *Broome Stages* which had, I thought, real merit. I have not been in a bookshop since I got home, except on a day's visit to Oxford. I found there a nice copy of the Bodin of 1586, in French, the best edition for five dollars, and brought it home. But before I leave here, I hope to spend a few days in Paris and there to have some happy hunting.

But America remains most vividly in my mind. It was one of the supreme adventures I have ever had. Even now, I hardly begin to realise how much I learned, and precious. I thought on all sides it was a richer civilisation than in 1926; and there was evidence and to spare of a growth of intellectual stature. One had the sense that America was trembling on the verge of great discoveries — that round the corner was the prospect of something of enormous significance to civilisation. I liked so much in the young men — and I thought the best of them, at least in the law, up to the best we produce in Oxford and Cambridge. I had unforgettable moments with you; for that birthday night alone in Washington I would have come over. You and Felix teach me what friendship can mean and if I say no more than that of our days together it is because I do not know how to find words for these things. I can only somehow stutter that few days in my life have meant more than when Felix brought me to Beverly Farms in 1916. What you have given me in these fifteen years has about it the richness that one dare not hope to repay.

I came home to find Frida and Diana both well; and their welcome almost made it worth while to have gone away. In some ways I find England very troubled and sad. She needs to make an immense effort, and is rather like a patient to whom lethargy is itself a source of pleasure. I have no doubt that at base she is sound. But she needs to save herself by her energy and then, as Pitt said, she may again save Europe by her example.

My love to you, dear Justice. Take care of yourself and be happy.

Ever your affectionate, H. J. L.

As from Devon Lodge, 15.VIII.31

My dear Justice: Your letter was very welcome. It came just as mine to you must have been half-way across the Atlantic. Of course, I agree largely with what you say about Johnny Palfrey and *the* biography. Only I think that is a matter for consultation rather than collaboration; or for chapters contributed. For anything else destroys the artistic unity of the work, and I feel there that Felix has a great opportunity to make a picture of a turning-point in the history of the United States, which ought to be of capital importance; and he is scholar enough to see the full implications of the opportunity he has.

The holiday proceeds peacefully. We have seen one or two things worth recording. Outstanding have been the Cathedral at Tours with some windows which, to my mind, were hardly less notable than those of Chartres and Notre-Dame. And a quite exquisite chateau at Azay-le-Rideau which, both for situation and for proportion made me hold my breath. The latter interested me particularly because it appears to be by a local architect — Berthelot¹ — of whom nothing else is known. I went also to the abbey of Fontevault which I wish you could have seen. First the abbey church itself — a miracle of proportions and renaissance carving — some of the most realistic devils I have ever seen. Then in the church the tombs of Richard I, Henry II and their wives. These were only discovered in 1910,² and the dust of centuries had acted so as to preserve the original polychromatic colourings of the originals. That of Isabella of Angoulême which is in sculptured wood — I believe a great rarity — was really a masterpiece — simplicity of outline, the beautified folds of the drapery and the purity of the line of the face. Altogether it was a most moving sight. The vision of this endless procession of chateaux produces in me the sense of the triumph of common-sense

¹ Gilles Berthelot, counselor of Francis I, and *seigneur* of Azay-le-Rideau, early in the sixteenth century tore down the existing chateau and built its famous renaissance successor.

² Laski was in error in his late dating of the discovery.

in the destruction of feudalism. It is difficult to believe that the life of the common man could have been endurable when the jurisdiction to which he was subject was so amazingly spasmodic in its operations. And one feels intensely how great must have been the hatred of the peasants for their masters when one reads in chateau after chateau that it was pillaged and destroyed in 1789. I think too that the French government deserves a tribute for the superb way in which it looks after them. I have never seen restoration done with such delicacy and care, or rooms so arranged as to mesmerise the original idea of spaciousness.

I have also done a little book-hunting at Tours. I found there for fifteen francs a fine first edition of Rousseau's letters from the mountain, and for a hundred francs a complete Cujas which belonged to Domat in five volumes beautifully bound in red morocco. We have also spent a good deal of time with Chevalley, a friend of mine who is an old diplomat. He is fascinating — the best type of cultivated Frenchman. He interested me particularly in his power so to recite Racine that one sees a meaning of emphasis in simple adjectives due to their position which I had never seen before. He is now writing a book on P. L. Courier, the pamphleteer and one discovery he has made is amusing. Courier's assassination has always been attributed to the Jesuits, and the books usually conclude with a long dissertation on their sins. He has found letters which show that, in fact, Courier's wife had a peasant lover and the drama is one of those very ordinary *crimes passionnels* in which the French specialise.³ He is interesting, too, on the habits of the peasant. Himself the son of one, he says that he continually finds that they save despite themselves. The man who works for him will walk five miles to read a newspaper rather than buy one. He has never been to a large town save Tours, for the railway fare is more than fifty francs. Yet he is a peasant who owns his own house, fifteen hectares of rich vineyards and has something like twenty thousand dollars in the bank. His son and daughter work in the fields and except on Sunday and in harvest time never know what it is to eat meat. And this is characteristic of the whole neighbourhood. One old man even wore his wife's spectacles not, as he explained to Chevalley, that there was anything wrong with his eyes, but it would be such a pity to waste them. Harpagon must have lived here. Even the rich peasants' houses lack the most elementary sanitary accommodation; and I think an English or American Medical Officer would condemn in bulk the poorer houses as unfit for habitation. The infantile death rate

³ Paul Louis Courier (1773–1825), political writer and Hellenist. The theory that Courier's assassination was prompted by political considerations was conclusively disposed of by Sainte-Beuve, and the true circumstances of his death were dealt with at length by Robert Gaschet in *Les aventures d'un écrivain, Paul-Louis Courier* (1928).

is huge and the peasant reply is that one can always manufacture more children but that money spent is money wasted. Even agricultural methods are primitive. They prefer to kill themselves rather than spend money on modern machines. The result is that at forty all the women look old, and at sixty there is hardly a man not crippled by rheumatism. But they have their little plot of land and cottage and they seem very content.

We stay here until next Wednesday when I go off to Geneva⁴ and Paris. Frida and Diana go in the car to Brittany and thence on to Antwerp where we meet. So I hope to give you news of significance when I write next week.

My love, as always,

Ever affectionately yours, H. J. L.

As from Devon Lodge, 26.VIII.31

My dear Justice: This is written in Antwerp where I have come on from Geneva and Paris. And in each place there have been adventures worth recording. At Geneva I found a very nice copy of the first edition of Spinoza's *Ethics* which I liked to have. At tea with Sir E. Drummond, the Secretary of the League,¹ there was a Japanese under-secretary not one word of whose conversation could I follow. Nearly every sentence of mine was "Would you mind repeating that?" When he left I apologised profusely to Drummond for my slowness. "Don't apologise," said Drummond, "I haven't understood a thing he has said to me since he came to Geneva ten years ago." I saw James Brown Scott there with French professors of international law eating out of his hand in the hope of a subsidy from the Carnegie Foundation. The city itself looked, as always, superb; the mountains behind it give it a magnificent solemnity. Then to Paris where I hunted books all day and talked most of the night. I dined with Meyerson the philosopher, very happily. What pleased me most was a denunciation by the old man of Hegelian idealism, in which he got so worked up that he took the first drink of brandy he had in fifteen years in order to give substance to his vituperation. Then a jolly dinner with G. Jèze, the French lawyer who has a happy name for Nicholas Murray Butler "Il Ponderoso" — and a lunch with Prof. Garner of Illinois,² a nice fellow with a kind of frock-coat mind, e.g. H.J.L.: "I have no doubt at all that Geny simply mistakes old Catholic dogma-

⁴ Laski lectured at the Geneva Institute of International Relations on "The Theory of an International Society"; see *Problems of Peace* (Sixth Series, Laski and Zimmern, eds., 1932), 188.

¹ Sir Eric Drummond, later Earl of Perth (1876-1951), was Secretary General to the League of Nations from 1919 to 1933.

² James Wilford Garner (1871-1938), Professor of Political Science at the University of Illinois and author of many works in international law.

tism for legal philosophy and I hate it." Prof. Garner: "It is not impossible that there is justice in your observations." The books I found gave me great pleasure as they mostly came from inexpensive little shops. The best of them was the very rare *Andrographe* of Rétif de la Bretonne — a kind of economic Utopia on a communist basis which he did before 1789. I could not, alas, find the sequel *Thesmographe* in which, having seen Robespierre at work, he abandoned it all, and went in for ordinary liberalism. I also found some very interesting contemporary criticisms of Montesquieu, one of which, by one Crevier³ at least, anticipated a good deal of what Eugen Ehrlich said in his book; and a pretty attack on the Fronde by Claude Joly *Traité de la restitution des grands* which might well have been written in 1789. I read a good deal, too. Vandal's *Avènement de Bonaparte* — an impressive panorama in which, as always, I came out with the feeling that Fouché alone justifies the existence of capital punishment; meaner slime never assumed human flesh. A great P. G. Wodehouse which I had never read before called *The Indiscretions of Archie* — has that ever come your way? — which made me laugh so loud in the *Métro* that I seemed to infect my fellow-passengers and descended to the accompaniment of a tornado of smiles. Also an admirable novel by Theodore Dreiser called *Twelve Men* — well worthy your attention and without the stylistic difficulties which usually accompany his books. Also a first-rate French translation of a first-rate Italian book on International Law by Anzilotti — the President of the Permanent Court. I went, too, to a grand exhibition of Cézanne and Gauguin. Among the latter's things was a Christ for which I go bail any day. It is a crucifixion, and the body has a sense of horror and agony, so that you feel all he endured. There is no beauty in it, and the face conveys only the sense of searing pain. I am trying to find a reproduction of it to send you; after the conventionalism of six hundred years you have an immediate sense that this is really a great masterpiece. I was going to stay in Paris until next week, but the English political crisis⁴ resulted in some telegrams which take me home tomorrow and I am stealing unjustifiably two

³ Probably Jean Baptiste Louis Crevier's *Observations sur le livre de l'esprit des lois* (1764).

⁴ On August 24, following a series of critical controversies concerning the economic crisis and measures to meet it, MacDonald tendered his resignation and that of the Labour ministry to the King. He was immediately asked to form a National Government. When the new Cabinet of ten was formed there were, in addition to MacDonald, but three members of the Labour Party, including Lord Sankey, who continued in office. On assuming office as head of the new government, MacDonald had indicated that when steps to meet the financial crisis had been taken, his National Government would be dissolved. It was not until October, however, that the dissolution of Parliament occurred and when it did, MacDonald appealed to the nation for a return of the National Government. That appeal was successful.

days here with our artist-friends on the way back. What I shall find I don't know; but all my sympathies are dead against the new government and I am praying that political differences won't, as they should not, make my personal relations with Sankey difficult. Things are clearly very confused and I dread a little the problems involved until, at least, the general election has cleared things up. Frida, meanwhile, has been motoring with Diana through Brittany and writes with ecstasy about the people and the churches.

My love to you as always. . . .

Ever affectionately yours, H. J. L.

Devon Lodge, 3.IX.31

My dear Justice: This is in fact written from Manchester, where I have come to spend a few days with my people. It has produced one or two interesting encounters. First, I put meeting an old school-fellow whom I met in the street. In my day he was perhaps the most brilliant classical scholar we had, a Balliol scholar, a double first and an incredible series of university prizes. Now he is a bank clerk and at nearly forty his only interest in life is collecting stamps. He took me off to his rooms — he is an old-young bachelor of devastating meticulousness — and showed me album upon album with that light in his eyes that Harpagon must have had when he spoke of money. He was preeminently content. Books, sport, the theatre, women, all these mean nothing to him. Was there anything I could do for him? Yes — there was an American aviation stamp he was anxious to procure; could I get him the address of a good New York dealer. His self-concentration was fascinating. He asked me no questions about myself. When I spoke of school, or Oxford, or the world's affairs he was clearly and obviously bored. But when I let him explain his stamps he was clearly in the seventh heaven. Then I met another school fellow who has become a brilliant physician. The contrast was remarkable. This fellow guides his life by the passion for scientific discovery. Beyond his specialty, he seems to have made the scientific world his province. He knew by name and achievement even the remoter Americans like Alfred Cohn and Phoebus Levin¹ [*sic*] whom I mentioned. And when I spoke of his own work he had a power of detachment about what it implied, the lacunae still to be filled, the degree to which statistical verification was still wanting, which was very moving. I had, too, a long afternoon with Alexander the philosopher. It was grand talk for he had just been re-reading Spinoza and was intoxicated with him. I found

¹Phoebus A. T. Levene (1869–1940), distinguished biochemist who was associated with the Rockefeller Institute for Medical Research from 1905 to 1939.

that he, like you and I, had discovered Chauncey Wright through an old bookstall and was very impressed. He said that C.W. gave him the impression of the most powerful philosophic mind America had so far produced. He told me an amusing story of his interview with the King when he was given the Order of Merit. It was clear that the King had never heard of him and did not know what to say. So he asked Alexander (I) if, like all philosophers he was absent-minded (II) if he did not find thinking very tiring and (III) if he ever went to the movies. At this point the equerry felt that the King had done all that could be expected and Alexander was quietly removed. I went to an exhibition in the art gallery of pre-Raphaelites — and found them quite ghastly. All the Burne-Jones were pretty-pretty; the Rossettis had a kind of green sickness; and the Holman Hunts seemed based on the principle that any violent contrast of violent colours on the same canvas is necessarily a work of art. But in the gallery there was a small etching by Rops — a French *café* near the Pont Neuf, which for verve and *diablerie* was worth a year of one's life to possess, the kind of miracle which produces new ideas and new visions every time one looks at it. I played around the bookshops a little — but I found nothing save an amusing laudation of Montesquieu published, I should guess, as a kind of publisher's encouragement to the general reader who is afraid of the size of the *Esprit des Lois*. And I found a cheap copy of Charles Warren's history of your court which I was glad to have for reference purposes. Otherwise my impression of this city is that its second-hand libraries consist chiefly of theology and the less admirable Victorian fiction. I was interested to hear from one bookseller that of children's books he still sells more of Louisa Alcott than any other writer except Grimm; and he told me amazing tales of the run on books by businessmen on how to achieve success in life and the emotional athletics of a writer of the sunshine type (of whom I am ashamed to say I had never heard) called Ralph Waldo Trine.² I bought a sixpenny by the latter and it was worth the money. It was Polonius with flowers: "You cannot afford to economise on sincerity." Have faith in God and you will win faith in yourself. Hard work and grim earnest make the pauper a prince among men, *et hoc genus omne*. He told me not a week passes but forty or fifty copies of this stuff are sold and that they are very favourite Xmas gifts from aunts. In a word, Main Street is the highway of the world. As I say, I have never encountered Mr. Trine; but my father's chauffeur, on whom I tested him, knew him at once and spoke of him with dim, religious awe as a great thinker. I asked if he thought

² Ralph Waldo Trine (1866–), Californian author and fruit-raiser, whose many products include *In Tune with the Infinite* (1897), *What All the World's A-Seeking* (1896), and *Through the Sunlit Year* (1919).

Alexander (whom he brings to the house often) a great thinker: "Oh, no!", he replied at once, "He's a professor of philosophy."

In the way of books I have not overmuch to record. Soltau's *French Political Philosophy in the XIXth Century* — a good solid book, with an admirable and satisfying account of Guizot, Taine and Renan. I doubt whether he makes as much as I should of Tocqueville, and he doesn't, I think, see how greatly Renan's scepticism is the outcome of the breakdown of religious conviction at an early stage; also a little curiously he takes Lamartine almost seriously as a politician. But it's a book which gives you a real sense of a big epoch in history; and he explains as I have rarely seen explained the peculiar connotation which the French Revolution gave to the idea of liberty. Then a charming book on Julie de L'Espinasse by Naomi Royde-Smith. I don't think I should like to have married her; one cannot live every day on the heights. But if I could have dropped in every Tuesday evening at her salon, I think I should have felt a special flavour in life. That took me on to Mme. du Deffand's correspondence with Horace Walpole. It is like an eighteenth century pastel in which, quite properly, Harlequin is a bit of a blackguard; and the comedy can't prevent you seeing behind the masque the grim contours of tragedy. If the Lespinasse book comes your way you would, I think, find it pleasing for solitaire.

We all send our love. I shall be back in London tomorrow with the decks cleared for action.

Ever affectionately yours, H. J. L.

Devon Lodge, 17.IX.31

My dear Justice: I was so grateful for Wales's letter;¹ and ever so glad that you feel better. All that you say of *Vanity Fair* commands my full-hearted assent with the note that one of the miraculous touches in literature is that brief word about Becky being heard weeping in her room at Miss Pinkerton's — but they were the tears of rage and not of sorrow. I've never understood why M. Arnold refused to agree that W.M.T. was a very great writer.

I have been busy beyond words with the political crisis here — working with Mr. Henderson morning, noon and night.² But it is not a thing to put on paper except to say to you that the spirit of this country is as fine and as sober as anyone could desire. In the front of danger, it is a great people, amazing in its power of self-control. Even in the very grave

¹ Robert W. Wales, Holmes's secretary, 1930–31.

² Arthur Henderson had refused to follow MacDonald's leadership into the Nationalist government and was the principal spokesman of Labour's opposition to MacDonald's new policies.

naval trouble³ the good humour of the sailors was the main feature of the situation. I also have been doing a good deal at the Indian Conference. It was fascinating to see Ghandi at work and try and penetrate his secret.⁴ It comes, I think, from what the Quakers call the inner light — a power of internal self-confidence which, having established its principles, is completely impervious to reason. At bottom it is an incredible egoism — what I think Canon Sheehan once described to you as the arrogance of humility — sweetened by an indescribable sweetness of temper. He is also an amazing casuist, with a Jesuitical love of dubious formulae which would be amusing if it might not so easily become tragic. But the drama of this wizened little man with the whole power of the empire against him is a terrific spectacle. The basis of it all is, I think, the power of an ascetic over Eastern minds who resent the feeling of inferiority they have had for 150 years. And to watch his people hang on his words, he who has neither eloquence nor the gift of verbal artistry, is fascinating. Whether we can come to terms with him, heaven alone knows; much depends on Sankey's negotiating ability. But at least I understand now why Christianity in the first century appealed to the poor and the oppressed. Through Ghandi the Indian ryot feels himself exalted, he embodies for them their own impulse to self-affirmation. And another interesting side is the way in which he has become a feature of English life — the crowd goes out to see him arrive in his loin cloth and blanket as they might want to see Charlie Chaplin. Coming away from the conference yesterday I asked a workman craning his neck to see, what Ghandi stood for: "I don't know, guv'nor!" "Then why do you come to see him?" "I always come to look at the sights. Floodlighting yesterday, Ghandi today, it's like a blooming festival." I don't think that even the prospect of losing the empire would disturb the *sang-froid* of the man in the street.

Reading, as you can imagine, has not been easy these days. My chief delight has been Hazlitt's essays, in 'bus and tube, above all "My First Acquaintance with Poets" which, read for the nth time, seems little less than a miracle. You see Coleridge in that pulpit as I can see Frida in the armchair by my side. Then I have had great pleasure from *Middlemarch* which I persist, however unfashionably, in regarding as one of the two or three supreme English novels. Will Ladislav and Mr. Brooke seem to me portraits of genius. I must, by the way, tell you a good story

³ The Government's reduction of public expenditures, approved by Parliament in early September, included reductions in naval pay. This had led to such serious unrest that maneuvers of the Atlantic Fleet had been canceled.

⁴ Gandhi served on the Federal Structure Committee of the India Round Table Conference, under the Chairmanship of Lord Sankey, at its September session.

of Hall Caine⁵ which is going the rounds. One night he was coming home from a party and hesitated two or three times to cross the road at a place where the police were holding up the traffic for him. At that time he especially cultivated his resemblance to the statue of Shakespere in Leicester Square. "Come on, Lord Bacon," said the policeman, "or you'll never get back to your pedestal tonight." And I must tell you of the Japanese professor who arrived last Sunday at tea with a page of questions on this model — 1. "What does the eminent professor think of the influence of Althusius on Rousseau, *with references to the text.*" 2. "Shall we discuss the influence of Montesquieu on the French Revolution?" 3. "Which are the hundred best books on political theory?" I reproduce *verbatim* and *literatim* from a typewritten document. I am afraid I balked them all as genially as I could which led to his remarking that in English academic conversation as compared with Japanese there is much more lightness and irrelevance!

I want, also, to boast a little and tell you that an essay of mine on the general character of the Age of Reason in France⁶ has been made compulsory reading for students in letters in Paris University — which pleased my vanity. I had a Frenchman in here this morning who would have interested you. He is, I should judge, about sixty, and his whole life has been devoted to discovering the books Pascal read with a view to measuring the influences he underwent. I had said in some book review that it seemed to me likely that Pascal had read Hobbes and the little man was dancing with excitement at the prospect of another book in his list. I suggested reasons for my view and then hinted mildly that the person Pascal read most carefully was P. himself. He looked at me with a reproach so sweet that I had the utmost difficulty in maintaining a straight face. And one other interlude was a young German who is writing a book on Occam and talked about him with a familiarity which left me staggered and humble. I asked him why he had taken so tough a subject and he said, with adorable simplicity, "Ah! no one has written on him at length since Rietzler [*sic*] in 1874."⁷ Blessed are the energetic for theirs is the Kingdom of learning!

Our love to you. I shall write once more to Beverly and then to W'ton.

Ever affectionately yours, H. J. L.

⁵ Sir Hall Caine (1853–1931); a sympathetic biographer has stated that his novels "are chiefly remembered for their astonishing popularity."

⁶ Presumably his essay in Hearnshaw, *The Social and Political Ideas of Some Great French Thinkers of the Age of Reason* (1930), *supra*, p. 1232.

⁷ Sigmund Rietzler, *Die Literarischen Widersacher der Päpste zur Zeit Ludwig des Baiers* (1874).

Devon Lodge, 27.IX.31

My dear Justice: It was good to see your writing again.¹ I do hope you will be really fit for the new term. Please take great care, and do not overdo things.

I am leading a grimly busy life. Half the time I am a kind of *eminence grise* for Sankey at the Indian Conference; the rest is taken up with the political and economic crisis here. I interview Saints like Ghandi, princes with unpronounceable names, and Mohommedans who would cheerfully cut my throat in the name of Allah. Ghandi is really remarkable; there is no difficulty at all in understanding the veneration he inspires. He is quiet, precise, and subtle, and there is an inner dignity about him which is of supreme quality. He isn't easy to negotiate with except on details; on those he is accomodating [*sic*] almost to an extreme. But on principles, he tends to put reason outside the pale and you can only counter dogma with dogma. The princes, with three exceptions, are a pretty poor lot. They are ill-educated, tyrannical, and with no conception of negotiation. They take you straight back to the days of the East India Company and make you feel that discussion with the likes o' them is folly and that one ought to act like a Warren Hastings with them. The Mahomedans are a poor lot in things of the mind, and their religious fanaticism is terrible. I guess, without evidence, that Pan-Islamic hopes are a huge farce in the East today and that behind their impossible demands are vague and terrible dreams. Poor Sankey! He and I both think a settlement possible. But what with Tory impossibilism on one side and Indian extremism on the other I fear that it is very unlikely. My prediction is a breakdown, Sankey's resignation, and three British army corps in India by Xmas. And this isn't the pessimism of a tired negotiator but a solemn estimate of the probabilities.²

You will know what vast events are taking place here. I will not comment on them except to say that if you want to see life at its most credulous just now the House of Commons lobby is the ideal place. If I see Henderson and say he is tired, by the time I get into the street, he is seriously ill. If MacDonald says a word to me, a lobby correspondent infers a coming rapprochement between him and Henderson. There is no rumour too wild not to be believed. From tales of immediate dictator-

¹ The letter referred to is missing.

² The first difficulties in the September meetings arose in connection with the problem of the rights of minorities, Gandhi and the Moslem leaders being almost hopelessly divided. In December the Conference came to an inconclusive and unsuccessful end. Lord Sankey did not abandon the government's policy with respect to India but remained in office until the Nationalist government was replaced by the Conservatives in 1935.

ship downwards the buzzing goes on. If the events round which it centres were not so big with tragic destinies, it would be a marvellous comedy. I have certainly been given a complete lesson in how miracles come to be accepted. And I beg you to double your regard for Gabriel Tarde. I undertake without effort to make ten members say the same thing in ten minutes, not because they believe it, or have stayed to examine it, but because someone has said authoritatively that it simply is so. A man started a rumour that twenty labour members were crossing the floor to support MacDonald. It was repeated with increasing emphasis until, at the adjournment, it was seventy members and four ex-ministers. I was even given the names of men with whom I had been sitting in committee that same evening drawing up the Labour programme for the imminent election as men certain to cross the House. Herbert Samuel went to see MacDonald in his room; ten minutes after he had come out, he told his secretary that he would not be in the House any more that day. Five minutes after that it was whispered everywhere that he had had a quarrel with MacDonald and that his resignation would be in the paper next morning. The actual truth was that he had a slight attack of diarrhoea and had asked the Prime Minister to arrange for someone else to answer the debate so that he could go home. Now I say that in this atmosphere you have all the elements which (I) explain miracles and (II) explain things like the touch and go element in such coups as Thermidor or December 2nd, 1851. One literally can count on the fingers of one's hand those who can keep calm in the atmosphere and refuse to believe without verification. When the crisis is over and there is normal life once more (if there ever is) I want to put some reflections about all this on paper. It is extraordinarily fascinating. It is the best commentary I have ever seen on the meaning and worth of testimony when abstracted from the possibility of objective measurement.

All this, as you can imagine, has left me busy and without time to do much reading. I have most heartily enjoyed a life of David Hume by Greig with a very interesting picture of Scottish life in the eighteenth century, and I snatched time to write an attack on Duhamel's *Scènes de la vie future*³ — one of those cheap and superficial attacks on American civilisation as merely mechanical and materialistic which make me really angry. They have the air of the lower regions of Montparnasse about them, and are unworthy even of the absinthe in which they were conceived. As real relief I reread *Nicholas Nickleby* almost always with delight. Mrs. N. seems to me one of the great triumphs of fiction, and though, as always with Dickens, there is a terribly rhetorical sentiment-

³ Georges Duhamel's book, in translation, was entitled *America: The Menace* and was reviewed by Laski in 147 *Spectator* 423 (Supplement, Oct. 3, 1931).

talily all the way through, still I think the whole is masterly, and the scene between Mrs. N. and the lunatic entitled to contest the palm for the best piece of broad humour in literature.

But I must end for the moment as some Mahommedans have to be seen. I send this to I Street whither, I expect, you will be going next week. You know what warm affection it brings and what devoted good wishes.

Ever affectionately yours, H. J. L.

1720 Eye Street N.W., October 9, 1931

My dear Laski: How long would you write to me if I do not go through some form of reciprocation? I don't know that there's anything the matter with me but I am not up to writing and so far as may be make my secretary¹ take my place. We are doing the usual work and arguments begin next Monday. Paltry personal details prevail over world problems and cosmic questions. I have lost two front teeth and can't get the dentist before Monday (it is Friday now). The Bar Association Medal has come at last — frightfully heavy — I suppose with precious metal.² The enervating heat of Washington has left me very languid. I infer that I must be careful about my heart. My bed was moved downstairs at Beverly. I don't worry — but my most willing activity is listening to my secretary. Just now *Juan in America* (Eric Linklater) — well enough — not very much. My affection for you is not flabby — everything else is.

Yours ever, O. W. Holmes

Devon Lodge, 30.X.31

My dear Justice: I do hope you have cherished no hard feelings against me. But I have had no moment since the election began until now in which to do anything but its grim work. Three meetings a night for a month, with India and teaching by day have been a heavy toll. But at least the Tory victory has been so hugely complete that I can hope for leisure from politics for pretty well five years.

It has been a curious experience. I have never before seen a whole people in a panic. They were, above all, terrified of a German currency *débacle* here if we won, and all else was subordinated to that. So that one saw an atmosphere in which reason had completely abdicated and no lie was too great to be believed. I don't take our defeat tragically, even though I think five years of Tory government a heavy price to pay

¹ Horace Chapman Rose was Holmes's secretary at the October term, 1931.

² At its annual meeting in September the American Bar Association had conferred its annual medal on Holmes "for conspicuous service in the cause of American jurisprudence." See 17 *Am. Bar Ass. J.* 715-717 (November 1931).

for a moment's panic. But five years is a small period in the life of a people.

Of course, except in trains, I have had little time to read or think. I have enjoyed greatly a book by a Harvard economist named Mason on the Paris Commune, in which I think he makes a very powerful criticism of the classic Marxian interpretation. And I read a book on Property by an old student of mine named Beaglehole which is a study, quite well done, of its place as a response to psychological necessity in man. I went back, too, to old novels with fervour. The one that came out best was *Esmond* which I did not read without tears. The description of the break between Beatrix and her people is really magnificent. Then I read again Wilkie Collins's *Moonstone* which I think has most of the modern detective fiction beaten flat as a piece of skilful suspense. And a Wodehouse previously unknown to me (perhaps not to experts like you) called *Jill the Reckless* which I am tempted to put very high indeed in the canon. In fact, there is one moment in the book where the old uncle is about to propose to the wealthy widow of New York which I regard as of quite definitely epic quality. Finally, I have been reading Troeltsch's *Social Teaching of the Churches* in its English translation. It is extraordinarily impressive. But I think the real thesis it makes clear is one that its author did not intend: namely that no church can mingle with this world and preserve the original purpose of its doctrine. A church, in a word, once it becomes an organisation becomes quite incapable of other-worldliness and is bound to make the kind of compromise which transforms it into an institution very like any other. Indeed, as one studies the shifts of doctrine that he describes, not less under the Roman empire than in our own day, one can't, if one lacks faith *ab initio*, avoid the conclusion that all religions must at some stage become part of the inevitable tactic of conservatism. That is quite astonishing in the case of the fathers of the Church who have an almost fiendish ingenuity in avoiding the conclusions inherent in their doctrine; and it stands out almost startlingly with Luther. But though I don't read the evidence as Troeltsch does, his book is really a great study in the history of ideas. Please observe that I do not ask you to read it; but I want to emphasise its value for the sake of the record.

Most of my interesting experiences apart from the election have come from the Indians. Sankey made me try to bring the Mohammedans to reason, and I had their leader here for hours trying to find a basis for discussion. But it was like talking to a wall. His religion was ultimate truth, and he was never even willing to find a plane of secular institutions which implied, so to say, a non-theological society. It was like being taken back into Reformation times. Then I had a long negotiation with Chandi about the army. Here we got somewhere by my discovery

that one could separate his rhetorical requirements from his actual. If I had had a free hand I think a settlement would have been comparatively easy; but, alas, the new political situation has hardened the mind of the Secretary of State¹ and I think my long hours will probably go to waste. The real tragedy of work like this is the sacrifice, on both sides, of reason to prestige. At the back of the Secretary's mind is the complex that the white man ought not to be asked to give way to the black; and at the back of Ghandi's mind is the haunting fear that the white man in India will always take a yard for each inch of compromise. If ever one saw reason as the slave of the passions it is in this realm. And I am terrified of failure which means an India in flames in the next few years and out of that tragedies too vast even to think of. What makes it so terrible is that each side knows this as well as I and is yet so damnably obstinate that it will offer a holocaust to pride without a moment's consideration of the cost. In a world like ours the only real thing to be is a mathematician or a physicist to whose work the human animal is irrelevant.

And I must not omit the visit of a German professor² who has written a book on de Maistre about whom I expressed some views in my first book.³ He was the real German *Gelehrte* dismayed because I compared De M. with Bismarck who were of different epochs. I said that one could compare 1789 with the Russian Revolution. He said he could not pronounce on that as either was outside his period. Oh God! Oh, Montreal!

Well, henceforth I shall write peacefully and continuously. Meanwhile my love as always. Make your boy send me a word about your health.

Ever affectionately yours, H. J. L.

November 12, 1931

My dear Laski: It is so good to get a letter from you that it almost becomes possible for me to write. I have been rather seedy since August, the month I always fear; but this little adjournment with my work done seems on the up grade. I don't feel tired all the time, as I did. My events apart from a short dissent from an opinion not yet seen if written,¹ are the books my secretary reads to me — some rather slight — Bliss Perry, *Emerson Today* — Bertrand Russell, *The Scientific Outlook* — Maurois, *Lyautey*, Birkenhead's potboiler — *Famous Trials of History*, Robertson *Fra Paolo Sarpi* — the book not much but the life most interesting —

¹ Sir Samuel Hoare (1880–), later Viscount Templewood, had become Secretary of State for India in MacDonald's Nationalist government in August.

² Perhaps Peter Richard Rohden, author of *Joseph de Maistre als Politischer Theoretiker* (1929).

³ *Studies in the Problem of Sovereignty* (1917).

¹ Probably *Hoefer v. Tax Commission*, 284 U.S. 206, 218 (Nov. 30, 1931).

Sarpi seems to have been one of the greatest men that ever lived — Stevenson, Thackeray &c. I don't like Stevenson very well. Thackeray gives me new pleasure every time. Lately I have read to myself 2 vols. of *Lettres choisies* of Voltaire. Not very delightful. A rather noticeable book Thomas Craven (of Kansas) *Men of Art* — a little conscious of culture — but really pretty good — and to me instructive. I try vainly at the Cong. Libr. for *Jill the Reckless* — but have got Mason, *The Paris Commune* which I expect to begin tonight or tomorrow. Tomorrow will be Brandeis's 75th birthday and the papers are or will be full of him. I have owed him much in the way of encouragement. He doesn't seem even to want it. Today I am listening to Arthur L. Goodhart, *Essays in Jurisprudence and the Common Law* with moderate pleasure. He seems to me not to get much above mediocrity, and makes one squirm by the constant respect and more, shown to Salmond, a pleasant gent, as I remember him at Judge Hitz's² house here some years ago, but not winged.

If you never read about Sarpi you had better — of course the book I read was by an unlimited admirer, a Scotch hater of the papacy (which gave Sarpi trouble) but I also marvelled.

I am not good for a long letter — to write one, that is — I am OK to receive one.

Yesterday I visited a fine new building next to the Congr. Libr. for an amazing collection of Shakespeare's works — 70 or so of the first folios, to show all the corrections, and everything on that scale. Folger was the collector and left it to Amherst College with supporting funds. The books are not yet in — but are getting in.

Affectionately yours, O. W. Holmes

Devon Lodge, 14.XI.31

My dear Justice: I hope that the Vanguard Press has sent you the new volume of your decisions, and that it meets with your approval.¹ Of the Foreword, I will only say that it comes from the heart and that every word of it is instinct with affection for its subject.

I have had a busy week — mainly academic and with the Indians here. After all our efforts, the Conference has broken down,² and I fear that with the turn of the year we are bound to be in for bad times in India. It is a great tragedy, which makes me feel inclined to curse reli-

² William Hitz (1872–1935), successively Justice of the Supreme Court, and of the Court of Appeals, of the District of Columbia, 1916–1935.

¹ *Representative Opinions of Mr. Justice Holmes* (Lief, ed., 1931), included a Foreword by Laski.

² See, *supra*, p. 1332, note 2.

gion — the real root of the problem — as a social disease. I made an eleventh hour effort, at the joint request of Sankey and Ghandi, to make the Mohamedans see reason. But it is impossible to talk to men who believe themselves to have ultimate truth in their possession, and my three hours were simply a dutiful wasting of time. I blame MacDonald in part; for if he had been strong-minded instead of weak and vain and indecisive, I think he could have compelled agreement. But he would rather go to Timbuctoo than make up his mind upon a difficult subject.

Minora canamus. I had an amusing experience in giving a public lecture at King's College on Tocqueville. For some reason the college assigned the Dean of Westminster to take the chair and he knew no more of Tocqueville than a good and gentlemanly cleric should. So his exordium was something like this: "Professor Laski is going to speak to us on Tocqueville who was a very great man. It will interest all of us to learn something about him because he was a very great man. He wrote a classic book on America which all the critics agree was the work of a very great man; and a book on the French Revolution which is usually considered great. But I do not want to anticipate anything Professor Laski may say, and I will therefore call upon him to deliver his lecture upon this very great man." I will not spoil his speech by comment. Then I went to lunch to the Aga Khan, the Mahomedan leader. I sat next to a young Indian prince with an unpronounceable name who wore jewels which he informed me were worth half a million sterling; otherwise he did not open his mouth except to ask me if I collected emeralds: I said no, and he relapsed into a sad somnolence for the rest of the meal. Afterwards I regretted that I had not said that I collected rubies to see what effect I might have produced. And I must tell you of the Japanese student who came to see me with a desire to write a treatise on socialism. His English was, if I may say so, at about the level of my Japanese. I asked him from what angle he desired to write the book. "Angle?" "From what point of view?" "Point of view?" "What line of approach do you want to take?" "But, Professor, it is not geometry but socialism about which I desire to write." So I sent him on to the department of international relations, feeling that it was really their business to promote good feeling between East and West!

I had one intellectual pleasure I must put on record. I went on Monday night to the University Law Society where F. Pollock read a paper.³ It was a remarkable performance. He never faltered for a word, and when the discussion was over he made a reply which did not miss a point and, in his dry Pollockian way was as incisive and direct as he must have been thirty years ago; and his familiarity with the recent literature I can

³ "The Lawyer as Citizen of the World," 48 *L. Q. Rev.* 37 (January 1932).

only describe as astounding. I went also to the inaugural lecture by young Plucknett, who used to be at Harvard and has come on to us — an astonishing effort.⁴ The *pièce de résistance* was an entirely new theory of the Year books which I shall not spoil by summary; you shall have the lecture when we print it. To my mind, it was the best thing of its kind done by an English academic lawyer since Maitland's inaugural lecture.⁵

In the way of reading, I have been mostly in the line of work. But I mention a novel by Edna Ferber about a New England house⁶ which, despite a somewhat cinematographic method, I thought very charming, and the *Life of Rosebery* which I thought about the most pathetic monument to plaintive egotism I have read. On the evidence of Lord Crewe's documents, Rosebery's trouble was that he thought in his inmost being that he was entitled without effort to primacy over his fellows. Struggle, therefore, was an attack upon his self-esteem, and contradiction a blow to his vanity. So after his resignation in 1895, there are thirty years of brooding at Epsom on the injuries inflicted upon him by [those] who felt they were entitled to differ. It is a most curious record; I don't think the mask has ever been so fully pulled aside from aristocratic self-sufficiency even though Crewe does it very gently and, I think, only half-consciously. I read also a book on Lincoln by the poet (is he a poet?) Edgar Lee Masters, which seemed to me simply a bad attack of that terrible disease Lytton Stracheyitis — the notion that to write a good biography all you need to do is to attack a great reputation with shovelfull of irony without any regard to the evidence. No one can doubt Lincoln's greatness, I think, who looks at his changes in Seward's dispatches. That is statesmanship if ever there was such.

One nice purchase — a copy of the 1606 translation of Bodin — as new as on the day when it first appeared. It was amusing that the bookseller let me have it cheap — five pounds — because instead of the usual engraved title-page this copy has only a plain lettered one. This he regarded as a grave defect.

Our love to you. I hope you have the same succession of sunny autumn days as is being vouchsafed to us.

Ever affectionately yours, H. J. L.

⁴Theodore F. T. Plucknett (1897–) had been teaching legal history at Harvard from 1923 to 1931, when he was called to London; author of many works on English legal history; literary director of the Selden Society. Plucknett's Inaugural Lecture, "The Place of the Legal Profession in the History of English Law," was published in 48 *L. Q. Rev.* 328 (July 1932).

⁵"Why the History of English Law Is Not Written," 3 *Collected Papers of Frederic William Maitland* (Fisher, ed., 1911), 488.

⁶*American Beauty* (1931).

Washington, D. C., November 21, 1931

My dear Laski: As you have discovered, it comes hard to me to write. The physical act comes hard. I don't know why or why I write smaller than I used to — but so it is. We come in next Monday. I have had a little feeling of rest and leisure though not much with 30 new applications for *certiorari* this last week, but I am in better condition than I have been, in August or September or most of October. My boy has read lots of books to me and I have done others by myself. I have this minute finished one by Virginia Woolf — *Mrs. Dalloway*. I don't care much for what I have read by her though I am deeply interested in her as Leslie Stephen's daughter. I suppose old age makes everything less pleasing to me than it used to be. There is a difference between 80 and 90. Just now my secretary is reading John Buchan — *The Blanket of the Dark* — but again I am not so interested as I hoped to be.

As I look back — Young, *The Medici*, and Robertson *Fra Paolo Sarpi*, both recommended by Brandeis, stand out — not for literary merit but for the amazement of the subject matter. Perhaps I might add Craven, *Men of Art*, which one hardly would have expected from Kansas. But, Lord, all the high aesthetes come from queer places nowadays. Parrington from Oklahoma (I believe he is dead) had a posthumous volume after his doing up our earlier efforts in a pretty smart way. I believe I have told you I can't see why they seem to take the author of *Walden* (I forget the name) so seriously.

I like what you say of Tocqueville and I have made much the same remarks about Maine's *Ancient Law* that you do. I delight in your letters but as I have said I find it very hard to write.

Affectionately yours, O. W. Holmes

I think Brandeis has been repaid for the row that was made about his appointment by the volume of appreciation called out by his 75th birthday — and he deserves it all.¹

Devon Lodge, 21.XI.31

My dear Justice: Will you get that young man of yours to drop me a line about you? Felix writes me that all goes well; but I should be comforted by a word from Washington.

I have had a jolly week. First I found a quite fascinating manuscript of Bentham's in an East End shop. It is a mass of notes he made in 1820 for an essay on the dangers of despotism to itself — from the date and contents born of his dislike of Sidmouth and Eldon. Its care and precision are remarkable. I hope to print it with some notes soon, and you shall

¹ See, *infra*, p. 1387.

then have a copy.¹ Then I have had a grand time with an Edinburgh catalogue — a first edition of Ricardo's *Principles*, the diary of D'Argenson, the works of that queerly attractive fellow the Abbé S. Pierre, and a nice set of Savigny — so that I feel well set up for the moment. I even liked what I could not afford to buy. Someone has found the almost complete library of Sir Isaac Newton and I handled such things as his own copy of the *Principia* with all his marginal annotations for a new edition. It was an interesting library — mathematics, travel and theology, with a small section on currency, deriving, I suppose, from his place as Master of the Mint. The travels — such things as Chardin — surprised me, except on the basis that a man such as he finds relaxation in reading of what he cannot do, just as one satisfies one's hunting instinct by reading detective stories! I add that the theology was terrible stuff — the worst kind of sixteenth and seventeenth century apocalyptic literature. It gave me the same feeling as I should have if I found in your library a set of essays on the British-Israelite movement.

Of reading, some very pleasant things. A life of Mme. de Staël by R. Wilson (whom I know not) — in the modern ironic manner, but very well done and obviously based on wide reading. If that is available in Washington, I think you would really enjoy it. Then a charming French anthology of reviews of classics published between Corneille and Voltaire.² That's a really amusing experience, to see a man gradually gaining his public in the face of malice and hostility. In the whole period Racine and Montesquieu come off best. Each seems to have had instant recognition as being in the first class. And it's amusing to see the queer changes in taste. Boileau up to 1700 is as near God as it is possible to be; after 1700 you see his reputation slipping until after the revolution it begins again not on the basis of his being a pleasure to read but that it is an obligation to read him in order that one may properly savour the spirit of the classical age. I read, too, with some pleasure an American book by one Howard Robinson on Bayle. It is a little heavy in the manner — forgive me — of American professional monographs, and it doesn't quite manage to make Bayle live (one could write a supreme book about him); but it is solid, and the expository work is amazing in its care and detail. One other book I read with pleasure was a study of the *Encyclopédistes* by Ducros. That's a real book — not too long, real pungency of style, and that perfect finish of style which the Frenchman at his best produces. I wish I knew why French professors write perfect French and American professors a queer academic dialect almost wholly devoid of a sense of humour. Indeed I can only call to mind Carl Becker as a first-rate

¹ The hope apparently was not fulfilled.

² Perhaps Vol. II of Marcel Hervier, *Les écrivains français jugés par leur contemporains*.

man who has the great virtues of lightness and weight at one and the same time.

Of other things there is not much to tell. I have been trying vainly to pick up some pieces from the wreck of the Indian Conference; and collecting money to send a poor devil of a young historian who has developed tuberculosis to Switzerland for the year. I was present at a discussion between two of my legal colleagues which is, I think, worth reporting. A: "Speaking as a lawyer, I regard the evidence for the truth of the Gospels as wholly satisfactory." B: "For myself I should have sent most of the papers to the Public Prosecutor for perjury." A: "Can't you see that they bear on their face the clear stamp of self-evident truth?" B: "I regard them as a mass of self-contradictions." A: "If that is the sole result of a training in the handling of evidence, I am doubtful of the value of a legal education." And I *must* not forget that the other day the Master of the Rolls (Ernest Pollock) presiding over a legal lecture at the School wound up by contradicting, not without vivacity, everything that the lecturer had said. A friend of mine, consoling the lecturer afterwards said that, after all, to be a Pollock is less to be a person than an institution whose traditions must be preserved. I was also visited by an amiable young professor from Tokio who told me with unblushing cheerfulness that he had made the journey to England on the profits of his unauthorised and pirated edition of my *Communism*. He was so damnably happy about it that I literally could not bear to suggest that, at least possibly, he had somewhat neglected my rights in the matter. But he assumed that he had met his obligations by presenting me with a copy of his translation!

Our love to you, as always. Keep fit, and take care.

Ever affectionately yours, H. J. L.

Devon Lodge, 28.XI.31

My dear Justice: A letter from you rejoiced my heart. I am so glad you feel more rested and that the work goes well. Thackeray sounds to me good nourishment; Thomas Craven appears unknown to English booksellers. I was not much impressed by Goodhart's essays. The decisive one was, I thought, that on the *ratio decidendi* of a decision, and I thought that this omission of the "Inarticulate major premise" showed that he did not realise the guts of the problem. I bow my head and undertake to recite on Sarpi by the end of the Xmas vacation.

I have had a pleasant but busy week. The most interesting item was a discussion with our professor of international law¹ before the graduate

¹ Herbert Arthur Smith (1885—) was Professor of International Law in the University of London, 1928-1946.

students on "Freedom of the Seas in International Law." He is one of those happy Englishmen who assume without discussion that international law = the dicta of English courts and that we have therefore always been right. In the result he produced a series of dicta indicating that it has been for the good of the world that Great Britain has dominated the seas and laid down a series of principles uniquely conceived in the world's interest. I showed, I think, with justice, that the case is not so simple and that his rejection of all continental or American views might be regarded as the passionate utterance of a saddened believer in the Ptolemaic astronomy who sees the growing acceptance of the Copernician hypothesis. His remark at the end was glorious: "I view with deep regret Professor Laski's inexplicable tendency to regard the opinions of American and continental jurists as *a priori* entitled to equal weight with those of British prize courts." It is magnificent as self-esteem, but, I think, pretty poor as jurisprudence. Then I spoke at the annual meeting of the National Birth Control Council on the desirability of scientific distribution of information on birth control by competent medical men instead of its furtive distribution by every sort of quack. I think that was sensible; and I was delighted when the *British Medical Journal* devoted a long leader to the wisdom of my remarks and the obligation of doctors to see that religious prejudice did not prevent people obtaining the best possible information when they wanted it.²

In the way of books. I have had some happy finds. Item, a grand set of D'Argenson's memoirs. Reading them, even fragmentarily, is like seeing 1789 creep into the picture before one's eyes; and his bad temper, and sense of disappointment at being thrown out of office, make him a very amusing human being. I found also a most interesting article of Jeremy Bentham's on the poor law reprinted from Young's *Annals of Agriculture*.³ There in 1796 is a complete scheme of vital statistics as the necessary basis of legislation. It is a remarkable piece of insight for its date; and certainly ahead of anything even attempted in this country for over eighty years after his time. Its whole basis is a plea that law must have its roots in the quantitative measurement of social experience; and as a legal methodologist, it puts Jeremy, in my view, up alongside Montesquieu as an innovator. Then I found a nice copy of Crucé's *Nouveau cynée* — perhaps the first book to plead for free trade and international organisation; and the 1557 edition of Sir T. More's English works which was sold to me for ten shillings because its title page was defective. The

² In 2 *British Medical Journal* (1931) 1044 (December 5, 1931) there was a detailed account of Laski's remarks at the first annual meeting of the National Birth Control Association on November 23.

³ *Pauper Management Improved* (1820) was first published in Young's *Annals* in 1797.

modern collector, I was given to understand, is not interested in texts, but in perfection of copy, with special attention to the breadth of margins. O God, O Montreal!

In the way of reading, I note much that is pleasant. A *really* good detective story by one Carr, called *The Lost Gallows*, published with you by Harpers, and, I think, guaranteed to intrigue and baffle. A really charming book on Goethe by dear old Nevins — short but complete as a picture of an influence and, as always with him, charmingly written. Then a volume of essays by Edmund Blunden the poet, called *Votive Tablets* which contains, I think, the very best essay that has ever been written about Lamb, tender, delicate, wistful, so that one felt that no one *could* have written it except someone who had known Lamb intimately; the kind of thing I wish I had the gift to write about my friend Hazlitt. Lastly I must mention a wholly admirable *Life of Bossuet*, by Lanson, a book which conveyed B's personality so admirably that you almost catch a glimpse of the gold brocade on his episcopal garments. No, not lastly, for I re-read in bed *The Virginians*, and loved every word of it. (This last sentence is spoken with deliberate defiance in case it is challenged.)

Felix sent me his very interesting paper on Brandeis's point of view;⁴ but I thought, also, that he overindulged his quotations with the result that his own style and presentation suffered. What struck me was the extraordinary power of Brandeis's mind as an instrument for the dissection of the immediate and the concrete; how, also, it was comparatively uninterested in abstract principle. I should have guessed that it needs the great case *e.g.* busting *Smyth v. Ames*⁵ to draw out his full strength and energy; and that a trumpety case in a remote New England town, even if it illustrated a pretty point of doctrine, would frankly bore him; but, though I regard this as a defect, he is clearly a noble fellow whom it is good to have in great place.

Here, for the moment, I must end. This week-end has to go to the grim and grave task of drawing up a report on the Home Office administration of alien laws. When one discovers that a little jack-in-office can stop an English woman married to an American from visiting her parents to exhibit their grandchild because the girl has a Russian name, as a civilised person one has got to act. So I went to the Home Secretary and

⁴ "Mr. Justice Brandeis and the Constitution," 45 *Harv. L. Rev.* 33 (November 1931).

⁵ 169 U.S. 466 (1898). In a series of notable dissenting opinions, *e.g.*, *Southwestern Bell Telephone Co. v. Public Service Commission*, 262 U.S. 276, 289 (1922), Brandeis had attacked the rule of *Smyth v. Ames* which sought to establish fixed constitutional standards for determining the fair valuation of utilities.

threatened to start a press campaign. Now, for my sins, I have promised him a report on the general principles. But I've got that girl a visa for her passport and I feel that at least it is a tiny flower in the wreath of freedom.

Our love to you, as always.

Ever affectionately yours, H. J. L.

Washington, D. C., November 27, 1931

My dear Laski: One of the greatest pleasures of my waning life is a letter from you. One came this morning. I am specially tickled by what you say of Lincoln's corrections in Seward's dispatches. I used to say that reading them had convinced me that Lincoln was a great man. Before that I had supposed and said that I was watching the growth of a myth. Apropos of the Bodin title page — when I was getting a first edition of *Paradise Regained* two copies were shown me — one scribbled all over the title page and others following by uninteresting remarks of some 2d rate 18th century man, the other clear, but perhaps cut $\frac{1}{8}$ inch shorter, and therefore a guinea or two cheaper. I should have bought it if the dearer. It seemed to me a curious criterion. I am wandering and browsing in my reading — mostly by my secretary after working hours. Another of the books on Italian themes that I have mentioned, suggested by Brandeis — *Isabella d'Este* — by Mrs. Julia Cartwright. I was pleased to learn that a beautiful familiar drawing by Leonardo was of the heroine — and also interested to see further evidence of the great place held in his day by Montaigne. I have three of the Mantegna Triumph Series. They have fine points but leave me rather cold — I see evidence that I haven't done him justice. I am reading to myself at odd moments Philip Schuyler Allen *Medieval Latin Lyrics* — Chicago University Press — which so far as I can judge is a contribution, but written disagreeably — to my taste. Miss Helen Waddell still holds the centre of the stage, so far as my knowledge goes. We read a recent book by John Buchan which didn't seem to me a success — *The Blanket of the Dark* — the name better than the tale. But I am afraid that there is no doubt that old age is dulling my taste for books as well as for food. I eat my meals with a pleasure that diminishes at each hour of the way, and books also find it harder to please — I also find it harder to write — partly eyesight, partly, I think, head. Living is harder work at 90 than at 80 — but I hope you won't get tired of writing while I still can read and be thankful.

Affectionately yours, O. W. Holmes

I don't know how it is that I have failed to tell you how I am moved by your introduction to the book of my opinions. You make me happier than I can tell you. I don't want to talk about it.

Washington, D. C., December 3, 1931

My dear Laski: A delightful letter from you this evening, bidding me tell my young man to write. Before this you must have had one or two from me. I don't know why it is that it comes so hard to me now, except that all life comes harder. I think that my usefulness is pretty much over and I am not sad. When the day's work is done my secretary from duty or devotion reads to me for an hour and a half before supper time and after it returns and reads again to say 10:30 when I go to bed. We have got through a lot. This p.m. 2 volumes Julia Cartwright *Isabella D'Este* — I think you must know a beautiful drawing in profile — with her hair down, by Leonardo da Vinci, and probably a portrait by Titian — I am quite charmed by the account — while the picture is so rich that it rather bores me. This, like the life of Sarpi, I owe to Brandeis who was lucky enough to spend part of his boyhood in Italy. . . . I may have mentioned Virginia Woolf — *Mrs. Dalloway* also not very pleasing to me — and your young man's book on the Paris Commune (Mason). I am afraid that old age makes me difficult. Books and victuals both find it harder to please. This seemed to me to be wanting in clearness of exposition. Some light things I don't mention e.g. like Buchan — *The Blanket of the Dark* — I found disappointing. Clouston — *The Lunatic in Charge* and another of the series made me laugh — not as much as your Jeeves man, but pleasantly. This evening I expect to begin — (we have read 2 or 3 pages) *Green Hell* by Julian Duguid which Lady Scott (Leslie's separated wife) asked me to read. So I dabble along — finding a sort of pleasure in life but expecting no more. 90 seems to have turned a corner. I am content however. Please don't let my flabbiness discourage your writing. It is one of my greatest pleasures.

Affectionately yours, O. W. H.

Washington, D. C., December 26, 1931

Dear Laski: It seems as if the shrinking of one's handwriting corresponded to a shrinking of one's being — both involuntary. I seem to be becoming a kind of well invalid. The faithful Mary the other day called in the doctor and he wanted me to go to bed. Things go very well if I don't try to accomplish anything — but I rather think the day of accomplishing is over. Like an invalid I talk about myself and my library is the field of my adventures. Philosophy and murder the main directions. You put me on to *The Lost Gallows*, which, when off the high horse, I do think A-1. For one thing it keeps the tone, throughout, and doesn't skip from tennis to poisoning a wife. To balance, a volume of John Dewey

— obscure but always good.¹ . . . In short, leisure kept me busy with agreeable reading and slumber. But meantime a dissent that the ever active Brandeis put upon my conscience waits untouched.² I have said my say before and don't worry, but I suppose that shows my decline — I ought to.

Tell me if Addison Bridge Place is the echo of a tradition? as also Devon Lodge?

I was interrupted above. I believe I was going to say I don't know why it is a burden to write but latterly it comes hard. I hope it won't be so with you. I feel full of talk — but find it hard to drive the pen.

Ever affectionately yours, O. W. Holmes

Devon Lodge, 7.XII.31

My dear Justice: A grand letter from you! But I don't want you to bother answering my letters unless you feel like it. They will flow on and on irrepressibly, and independently of response.

I am putting in a separate envelope the last P. G. Wodehouse I have read — which seemed to me an unadulterated miracle. Beyond that I have read little by way of fiction except a novel by an old student of mine called *Apartments to Let*¹ which seems mainly to deal with the difficulty of distinguishing between professional and amateur promiscuity in Bloomsbury. I thought it singularly dull, that there was no point in telling me that Pansy of the Slade Art School slept with Jones on Tuesday and Brown on Wednesday, unless I could be made to feel that Pansy was significant; but I couldn't find significance even in the bed, though in accordance with the modern passion for realism it was a dated Heppelwhite. But you can see how poor my taste is when I say that the *Times* hails it as a masterpiece and the *Spectator* suggests that nothing so good has been done since Guy de Maupassant.² Other things have been more substantial. A really excellent book by a Russian exile in Paris named Gurvitch called *Histoire du droit social*³ beginning with Grotius and going down to 1900 — full of learning and quite beautifully clear in exposition. Then a volume of economic essays by Keynes — *Essays in Persuasion* — which I thought quite masterly, technical exposition so

¹ *Philosophy and Civilization* (1931).

² No such dissenting opinion has been identified. It is not unlikely that the case in question was *First National Bank v. Maine*, 284 U.S. 312 (Jan. 4, 1932), in which Holmes and Brandeis concurred in a dissenting opinion delivered by Mr. Justice Stone.

³ By Norah Hoult.

⁴ The review in 147 *Spectator* 776 (Dec. 5, 1931), praising the book, did not explicitly make the comparison.

⁵ Georges Gurvitch, *L'idée du droit social* (1932).

beautifully written that it was a joy just to watch the movement of his mind even where one disagreed with him. One essay — "The End of Laisser-Faire" — would I think have interested you greatly, for it is a wholly admirable pendant to your dissent in *Adair v. U.S.* Then a volume of Gooch's essays⁴ — mainly bibliographical learning save for one really interesting portrait of Holstein the German diplomat, the *eminence grise* of Bismarck which made one feel that if this was biography the most extreme thriller was almost less than true. I know the Julia Cartwright books — they pass, I think, but not much more. And I have read Buchan's new novel which I thought pretty thin stuff, a man trying to be profound but without the wits or the knowledge to be it. I must add one other book, if I have not mentioned it before, Moritz Bonn's *Prosperity* — a translation from the German — which I think a short masterpiece, the best book, because (a) the wisest and (b) opening the most intriguing vistas I have read in many a day.⁵

Most of the rest of my time has gone in Indian negotiation, especially with Ghandi. What will come of it all, God only knows.⁶ I have been trying to stop it becoming a question of prestige on either side, which, as in all nationalist issues, it has a tendency to do. The trouble is that while I satisfy Sankey and begin to get a move begun Sankey doesn't get his way with his colleagues in the cabinet and it isn't at all easy to build up a coherent plan which fits into one cabinet minister's instructions, and then find that a large part of one's results are undone by the obstinacy of another. Half the trouble with the Indians is a question of national and racial pride. A good example is the army. Ghandi says "I want control of the army; otherwise you don't give us responsible government." The cabinet says "You are not ready for control; in any case we can't put white troops under Indian control." I say, "Let us begin with a preamble affirming Indian right to control and then add that while an Indian army is being built up, the following safeguards, a, b, c, d, shall obtain." Then I take back the dangers, leaving all the rhetorical claims amply satisfied. This contents Ghandi, and it satisfies Sankey who, being a sensible man, doesn't mind leaving the other man the shadow, if he surrenders the substance. But the damned Tory Secretary of State⁷ gets on his hind legs and develops a prestige complex just as footling as you can imagine, throws it all back into the melting pot, and one has to begin all over again. Truly the way of the negotiator is hard. I get loving

⁴ G. P. Gooch, *Studies in Modern History* (1931).

⁵ Reviewed by Laski, 2 *New Statesman* (N.S.) 817 (Dec. 26, 1931).

⁶ Early in 1932 things went from bad to worse in India. With the revival of the Congress policy of civil disobedience, Gandhi, who had returned to India on December 28, 1931, was placed under arrest on January 4. It was not until May 1933 that he was released.

⁷ Sir Samuel Hoare; *supra*, p. 1336.

words from Ghandi and Sankey, and kicks from the rest; and the added joy of knowing that if anything at all comes of it the credit goes to a government I utterly despise. In one way it is, of course, extraordinarily interesting. The job of trying to bend the mind of a man who in his turn influences the minds of millions in India is a fascinating experience; and the intellectual effort of trying to discover middle terms in the infinite series which prestige involves is a good mental exercise. I have a high opinion of the subtlety of Ghandi, and his charm is immense. But he is a ghastly faddist — and on economic matters he has literally not even the beginnings of realism. What the future holds for him and us I tremble to think. If he and Sankey and I were left alone for a week we could have solved the whole damned business and, I think, in a way that would have commended itself to most reasonable men. But, alas, that is not the way that things happen in politics.

I have bought only one book in the week — a nice copy of Spinoza's *Works* in a new and rather noble German edition which has the advantage of a really good bibliographical apparatus so that you can see what happened to each of his books in different countries.⁸ I tried hard to get from Paris a volume containing 17th century pamphlets on toleration which I should have prized — but, alas, I wrote instead of sending a telegram and suffered the requisite penalty; which served me right. One of my colleagues had a stroke of fortune — he was left some books by an old clerical great-uncle among which was a perfect copy of Thomas Lodge's *Rosalynde* for which his uncle paid forty pounds in 1881; my colleague put it up at Christie's today and it was knocked down for twenty four hundred pounds. I, alas, have no great uncles!

Our love to you. I wish I could drop in for a talk.

Ever affectionately yours, H. J. L.

Devon Lodge, 13.XII.31

My dear Justice: I imagine this will arrive in the proper time for our Xmas greetings. You know how warm and affectionate they are.

A letter from you, with much account of reading, was a great joy. I have had a busy week. Long interviews with the Indians; a couple of meetings of the committee on administrative law, now in its last sessions, I hope; a long dose of Sankey who (a) is unhappy in the government and (b) doesn't want to leave it and is therefore in that difficult frame of mind where a full sincerity is a dangerous luxury; a grim industrial arbitration where I had to reduce 2000 men's wages by 7 and ½% as an alternative to throwing them out of work altogether; and a dinner at

⁸ Probably *Spinoza Opera, Im Auftrag der Heidelberger Akademie der Wissenschaften, herausgegeben von Carl Gebhardt* (4 vols., 1925).

Gray's Inn spoilt for me by sitting next to the Bishop of London who has that intolerable kind of unctuousness which makes you really want to vomit. When I hear men of his type speak of the "beautiful spirit of the poor" and the "noble sacrifices of our aristocracy" and the "devotion of the clergy to their Divine obligations" I really understand why the *tricoteuses* sat unmoved under the guillotine. However, I learned there one great story. At a Cambridge dinner the Master of S. Johns said that he dreamed he was present at the Day of Judgment. When the sheep had been divided from the goats, the late Master of Trinity (H. M. Butler)¹ arose from a prominent place among the sheep and without invitation spoke as follows: "I do not feel I can allow this great occasion to pass without extending to the Deity, on behalf of those present, and particularly for those among whom my lot has been cast, our sense of the admirable and, may I say, perceptive fashion in which a very difficult task has been performed. Not, indeed, that I am surprised; for there is a special sense of the word in which I may claim for the Deity the great privilege of being a Trinity man." Don't you think that is a really admirable example of dry academic humour?

In the way of reading there are some things it is worth while to report. I read with enjoyment a book by a Columbia Professor named J. H. Randall, called *Our Changing Civilization*. Marred a little by a certain religiosity of atmosphere, it was still a really interesting example of the way in which one can depict the relation between ideas and the material environment over the last four centuries so as to bring out their causal relation. Then, for the first time, I looked at Buckle's miscellaneous papers. There isn't much in them except one essay which would, I think, move you profoundly as it moved me. It is a review of Mill's *Liberty* and is written round a protest against the decision of Coleridge, J. in a blasphemy case known as *R. V. Pooley*.² I don't know if the essay has ever come your way. If not, I think it is worth half an hour as a really superb example of the eloquence of generous indignation against injustice. Mill himself could have done no better. Most of the rest was hardly worth reading except as an interesting insight into Buckle's inexhaustible curiosity. That led me into reading J. M. Robertson's *Buckle and his Critics* which contains *inter alia* a savage and unjustified attack on L. Stephen. But I think the general thesis of the book wholly right *i.e.* that the explanation of history in terms of great men is foolish, and that one must penetrate to the reasons which permitted great men to succeed for *verae causae*. In fact, he made me feel that an argument like one of B. Russell's which I saw lately, that if 100 men like Descartes had

¹ See *supra*, p. 902.

² See *supra*, p. 1184.

perished c. 1600–1700 there would have been no such thing as modern civilisation is really futile. One can say that the one thing certain is that no man is indispensable to any movement; and that even Napoleon only shifts the axis a degree or so without altering its direction. I also read with great pleasure L. Stephen's *English Literature and Society in the XVIIIth Century* which I thought wise and mature talk from an armchair by a man who knew his materials as a scholar and a gentleman should. I was interested in your observations on Virginia Woolf. I have never succeeded in getting through any of her novels which always seemed to me precious and labyrinthine. But there is a volume of her essays called *The Common Reader* in which there are two pieces (I) "On not knowing Greek" and (II) "A Room of One's Own" which are, I think, really superb. Her novels seem to me to belong to the modern tradition of minute psychological analysis of the fantastic or the insignificant which I regard as a real waste of time. It exhibits the infinite ingenuity of the writer; but it is the same thing as a juggler keeping six balls in the air at once. The justification of technique surely depends upon its application to vital subject matter. A friend of mine has just produced a novel which gives in 400 pages an account of a day in the lives of a suburban clerk and his wife.³ You are told everything from his morning diarrhoea to their habitual intimate embraces at night; the menu of his lunch with the note that the waitress had a smut on her cheek; the fact that when his wife shopped she could not get a sole for his dinner. But you never feel (I) that the fellow can tell a story (II) that the presence or absence of any detail makes an atom of difference (III) that the mere description of the detail is art when it is a photograph in which there is no distribution of emphasis. But the critics have selected it as a "masterpiece of realism"; one of brains even suggests that this is the work of a Balzac *in posse*, and I am made to feel that I don't know my job when I cannot be enthusiastic! But it may be that the critics are wrong.

Our love to you as always.

Ever affectionately yours, Harold J. Laski

Devon Lodge, 19.XII.31

My dear Justice: On the whole, a quiet and peaceful week. Some committees, the inescapable student (who does not realise the meaning of vacations) and a dinner party. This, plus the difficult task of finding Xmas presents for Frida and Diana has absorbed most of my energies.

But I have had a jolly time reading, and writing a little. I am trying to do a pamphlet for the Fabians on the constitutional side of our recent

* Not identified.

electoral debauch, and I find it both delicate and amusing.¹ One truth it has convinced me of and that is that in the realm of the conventions of the Constitution, we have no practices to which the term constitutional can be applied. On the question, for instance, of whether the King can grant or withhold a dissolution from the Prime Minister I find that three authorities are on one side and three on the other. What one decides in that perspective I really do not know. Reading, too, has been very pleasant. I read a good book on *English Constitutional Law* by Wade and Phillips in which it was particularly interesting that they should take for granted the impossibility of accepting Dicey's views on administrative law. Then a rather queer book by an American named Haines called *The Revival of Natural Law Concepts* of which the point seemed to be that any writer who took the view that ethics were relevant to law believed in natural law. The man seemed to have read everything under the sun and to have remained entirely unaffected by what he read. Then I paged C. K. Allen's *Essays in Jurisprudence*. They reveal all the merits and defects of the English lawyer: (I) great clarity of style (II) a remarkable knowledge of the cases (III) a pathetic belief that references to Pound and Korkunov constitute a knowledge of modern jurisprudence (IV) a sense that law is a private mystery into which none save the lawyer can enter. Of English jurisprudence in its formal sense I really think it would be true to say that since Sir H. Maine no one save Pollock and Maitland have made any contributions of real importance, and, on the juristic side, they have been episodic even if profound. There must be something narrowing in the discipline as it is here conveyed. If you look at Salmond or Holland whose names are repeated in rebuttal in a tone of reverent ecstasy, you read a dull body of formal definitions so made as to evade all the essential problems involved. Compare, for instance, Salmond on juristic personality with Maitland; the former isn't even aware of the nature of the problem. The same is true of liability without fault, the same is true of public policy. I thought Winfield's article in the November *Harvard Law Review*² a good instance of *docta ignorantia*. He really thought he had dealt with his problem by stringing together a body of second-rate judicial pronouncements which took nobody anywhere. Clearly he knew the reports superbly; clearly also he had never thought that the discovery of principle meant examining and not merely classifying the dicta of the reports. In a very different line I read Scott's *Waverley* and found that while I thoroughly enjoyed the dialogue, the descriptive part bored me stiff and I had to skip it. But

¹ *The Crisis and the Constitution: 1931 and After* (Day to Day Pamphlets, No. 9, 1932).

² Percy H. Winfield, "Ethics in English Case Law," 45 *Harv. L. Rev.* 112 (November 1931).

I was interested to discover the clear kinship between Scott and the "horrific" novelists of the eighteenth century. It's queer how *Sehnsucht* became a rooted part of the romantic tradition. I think I could show that it is a part of what calls itself modern realism, that e.g. the pose of the aloof cynic in people like Aldous Huxley is really nothing more than the Byronic pose in a modern expression. I also re-read with immense enjoyment M. Arnold on translating Homer, and Newman's *Apologia*. The latter is really masterly — a marvellous piece of special pleading. On the merits he is only saying that he believes this and this to be true because he feels it intimately. He has no sense of truth about the evidence he accepts and a certain queer economy of scruple that is, I suppose, an almost necessary part of the priestly temperament. I also had for review a queer book on Rousseau by a Frenchman named Charpentier.³ If it did not say twelfth edition on the back I should have guessed that the man was a half-wit. He seems not to know that R. could not at once have moved the world and have been nothing more than a stupid blunderer. And he perpetrates with gusto the old piece of stupidity that R. was the chief cause of the French Revolution. That isn't anyhow a dement; but how today anyone can say that its course would have been deflected by a hair's breadth if Rousseau had never lived I cannot imagine. Finally, I must mention a really good novel *Without my Cloak* by Kate O'Brien which, despite an Irish scene, contains no brogue and has real brains in it.

I have had one book adventure which deserves recounting. I bought at a West End shop for ten shillings a copy of Godwin's *Enquirer*. While examining it I saw that it had notes and after paying I looked into them. One had S.T.C. on it and comparison with a letter in the shop made it clear that they were Coleridge's beyond all doubt. So I resold it to the man for fifteen guineas with the result that I now possess a most dignified set of the Somers' *Tracts* and the *Harleian Miscellany*! This either proves the potential business ability of the academic mind, or the fact that Jewish blood will out — which I do not know.

I think this should arrive in time for the New Year. I need not tell you how affectionate are the good wishes it brings.

Devotedly yours, H. J. L.

Devon Lodge, 29.XII.31

My dear Justice: Xmas has come and gone, and we are off to Antwerp this evening. I have had a pretty busy time as Leslie Scott kept us at the Administrative Law committee until Dec. 23, and owing to the illness

³ Laski's review of John Charpentier's *Rousseau, the Child of Nature* (1931) has not been identified.

of a colleague I suddenly had to do a long and complicated university report on academic policy — which I found very dull. However, it *is* done; and I can recite manfully on the needs of the university, supposing a millionaire to come along which he won't. And my great editor-hero C. P. Scott of the *Manchester Guardian* — the noblest journalist I have ever known — is dying and I have had at top-speed to write the kind of tribute which friendship demands on these occasions.¹ That is a curiously difficult decision to make. You don't want to write, because you feel the thing is too intimate for public utterance; but you feel that you must write to be sure that the just thing is said. I never knew a man more chivalrous than he, or with a finer sense of justice. He would fight at the drop of the hat. Only the other day he helped me with a grand protest against the foul action of Mussolini in dismissing all university professors in Italy who refused to sign a declaration of loyalty to the Fascist party. A man who will fight like that at eighty-six is worth having as an influence in public life.

In the way of reading, there is not very much to tell. I enjoyed greatly a life of Bishop Berkeley by Hone and Rossi, a book of great merit with the curious undertone of conviction that what mattered most in Berkeley was the fact that he was an Irishman. Incidentally I was arrested by the fact that he and Hume had both completed their essential philosophic work by the time they were thirty. That must be rare among philosophers, though common to mathematicians and physicists. Then I read a charming book on Montaigne by Lanson, particularly good on the relations between M's ideas and the theology of Raymond de Sebonde.² I also spent a pleasant evening with Pascal, which tempted me very much to an attack on him. It would take the line that his mind told him continuously that he had no right to faith, and that he perpetually crucified himself to stifle his intelligence. The famous "the heart has its reasons of which reason itself is unaware" is the cry of a man seeking at all costs to betray reason. Why? I think that the causes are first a sense of dissatisfaction with the *milieu* of the Court — he is not well-born enough to succeed there, and his sense of intellectual superiority did not brook subordination — and second the probability of a disappointment in an affair of the heart. I should seek to show that apart from his scientific work Pascal might have done more than any man before Bayle to

¹ Charles Prestwick Scott (1846–1932) had been editor of the *Guardian* since 1872; he died on January 1, 1932. Laski's essay on Scott was in the *Daily Herald* for January 2, 1932.

² Raymond de Sebonde (?–1432), Spanish theologian whose principal work, *Theologia Naturalis, sive Liber Creaturarum* (1487), was translated by Montaigne.

prepare the ground for rationalism, whereas he was content to anticipate Newman's *Grammar of Assent* — itself an inherently sceptical work. It is tragic to see a mind so keen and a style so exquisite devoted to the effort to find grounds for the defence of obscurantism. Then I read a most able little book by Carl Schmitt, the German lawyer, called *The Necessity of Politics* of which the real point was the inability of a purely materialist outlook to give birth to a scheme of values; therefore politics protects the soul of man; but politics is worthless save as it is built on eternal truth; eternal truth is religious truth; the only true guardian of religious truth is the Roman Church. It is of course unfair to make so crude a summary, for the book has something of the power of de Maistre, with Russia substituted for 1789. And I must not forget to add a very good detective story called the *Green Falcon*.³ If that comes your way, I commend it for an accompaniment to solitaire.

Little queernesses have happened in the last days. A Chinaman turned up with a request that I read a ms on Ancient Chinese political philosophy. I protest my ignorance. He thereupon offers to tutor me in preparation for the reading of his ms. He pledges himself that with one afternoon a week for six weeks he will undertake to initiate me into the central principles so that I can then devote myself to his book. He is pained at my refusal. He had hoped for a greater interest from an academic colleague. Then a request that I give three lectures at Louvain University on the Political Philosophy of the 16th Century Jesuits. There are no conditions save the need to submit my manuscript to the Father Provincial of the Order in Belgium. I explain that I never speak from a manuscript. It is politely explained that this time I must do so if I wish to speak in Louvain. So I explain with some emphasis that I do not so wish. Finally I must record the history of the gentleman who read a report of a speech of mine in which I said that if humanity learned to control population the result might be more important than any event since the discovery of fire. He called to see me on "a matter of urgent importance." I wondered what it was when he arrived and put a bag on the table from which he proceeded to take a large box with electric plugs. He then explained that this was an electric birth control apparatus, price fifteen dollars, which he was about to put on the market; and in view of my admirable speech he invited me to join the Board of his company without obligation to take up shares. You see that I am a public character!

Our love to you, my dear Justice, and every sort of good wish for the New Year.

Ever affectionately yours, H. J. L.

³ No book of that title has been identified; perhaps the reference intended was Charles Rodda's *Green Talons* (1931).

Devon Lodge, 13.I.32

My dear Justice: I read in this morning's *Times* of your resignation.¹ I was not surprised, but deeply moved. And I will say no more than this that you will know how much of what you felt went through my mind and how wholly I was with you in spirit.

I came back yesterday from a most restful fortnight in Antwerp and am back at work. I had, mostly, a feast of pictures of which the most delightful experience was to find a man who had a complete set of all the etchings of Callot. They were grand indeed, and one got from the completeness a sense of 17th century France that it would not be easy to see otherwise. I had also a feast of Brueghel drawings, all of them very fine, but especially the etchings illustrating the proverbs, which probably you know far better than I. And I had some grand book-hunts in Brussels and Ghent. My best find was a collection of 200 *Mazarinades*, some of them really rare, which I got for three francs apiece. Some of them I had been searching for in years. I found also a copy of Dupin's attack on Montesquieu which I value not only for itself but also because it was suppressed by the order of Mme. Pompadour and this was one of a dozen copies which Dupin was allowed to retain from the bonfire. I also bought a set of Bayle's *Nouvelles de la république de lettres*, the first serious literary-philosophic journal, which I have been dipping into ever since, and with enormous enjoyment. Queer old fellow Bayle. I look forward to writing about him. All Voltaire is there except the lightness of touch. I met some interesting people. The outstanding one was an old Jesuit who had been for forty years on the borders of Tibet and China. I asked him why so long. It was a punishment originally for excessive devotion to theological heresies. Why did he stay so long? After the first ten years he liked it; it was so peaceful never to be overlooked by another Jesuit. At eighty, his brother had left him a small income and he had returned to Belgium knowing (1) that if he had trouble with the Order he could always live and (2) if he had no trouble he could also live. Please imagine the adorable shrug of the shoulders that accompanied this. What did he do in China? He mostly read Buddhist theology and the French deists who, he declared, have almost a Chinese lack of cosmic excitement. He found Europe very little altered. Men are mad, he said, about different things; but they are still mad. They have invented some more conveniences and complicate their lives still further in order to use them. In his old age, he was reading the great French sermons of the 17th century. Bossuet he thought an eloquent snob; Bourdaloue should have been an English politician — he had *le cant anglais*. Fénelon he admired for his graciousness, but above

¹ On January 12 President Hoover announced Holmes's retirement from the Supreme Court.

all he cared for Massillon who had pity and sociability. What did he learn in China? Above all, two things: first that it is the sense of compassion which makes man civilised, and, secondly, that to multiply one's wants is to diminish one's compassion. I wish I could depict the old man — bowed, white-haired, blue-eyed, almost a ghost, but as though all the travail of humanity had been reflected upon and distilled into an exquisite sweetness. In marvellous contrast I put a Belgian painter — the fashionable portraitist of the hour. He has a trick of verisimilitude which has made the big business men feel that he must confide their features to posterity. He is the finest actor I have ever seen. He literally lives by the *beau geste*. He strikes an attitude with every phrase. He is got up for the artist's part, — purple velvet coat, great flowing tie, black sombrero. Every other phrase is "*Ma maitresse l'art*" or "*fidélité à Cézanne demande que. . .*" It was the best evening of its kind since I saw Bernhardt in *Les précieuses ridicules*! On the whole, I hope you will agree that I did not waste my time.

I read much too. The most moving thing was a re-reading of Rousseau's *Confessions* which have haunted me ever since. For I can't get his liveliness out of my head, or the sense that, temperament apart, he was the victim of a system in which the man of letters had to pose before an aristocratic *clientèle* and was lost if, like Rousseau, he could not find the right pose. I saw nothing of the charlatan or sophist, but a man yearning to be himself, dependent on friendships, and unable to find the key to either gate. Then a novel by Louis Golding called *Marigold Street* [*sic*] which I dare to say is not unworthy of Dickens. I beg you to think of it as an accompaniment of *solitaire*. I read also Goodhart's *Legal Essays* and those of C. K. Allen, but I thought both of them flat beer. Neither had the trick of reaching the jugular and both were intolerably long-winded. Why cannot England produce jurists of the first order?

Now work has begun and I am fairly buried in it. But for the moment I have compensation in entertaining for a week a German archaeologist whose subject is ancient Chinese and Siamese bronzes. I, God help me, as am innocent of these as of, let me say, ancient Coptic inscriptions, but in the intervals of his visits to the Museum he tells me that bronze A in the Museum at Kiev makes it impossible — do I not agree — to accept X's ascription of bronze B in the museum at Bangkok to the Tang period (or is it the Ming?). I shake my head with very great solemnity over X's heresy and agree with him that no *savant* would be guilty of such sloppy work. It gives him pleasure and I find no guilt in my conscience. I hope you are neutral on the ethical implications of this genial hypocrisy.

My love to you, dear Justice. Be happy.

Ever affectionately yours, H. J. L.

My greetings for 1932 to Mary, please.

Devon Lodge, 20.I.32

My dear Justice: Term is in full swing, and with all its problems. The most interesting, I think, is to satisfy the human material and make it sceptical about the foundations of its thoughts. The American to whom his experience is already of final validity, the Indian who does not doubt that self-government will solve all his problems, the Englishman who thinks that foreign differences from him are really a measure of inferiority in intelligence. To make each say to himself: I may be wrong; perhaps there are other possibilities is as good an exercise for the mind as I know. Curiously, right on top of your letter, I had to take the chair at a lecture by Goodhart on "Recent Tendencies in American Jurisprudence." It was a curiously interesting though second-rate performance. He thought, clearly, that the realists *à la* Karl Llewellyn of Columbia were just wicked; that you and Cardozo had undermined that faith in the place of inescapable logic in the law which was fundamental to security; and that all the materials of legal decision could be found in the reported cases. I said a few polite criticisms at the end, mainly to the effect that "inarticulate major premises" had played their part in legal history; that law was woven from the stuff of life and was not a thing apart from it; that certainty in law was a static ideal and not a dynamic fact. Goodhart's commentary was a very revealing one: you (Laski) talked legal philosophy and not law. And this reminds me to note an amusing tussle at our committee on administrative powers on the question of whether an ordinary court would be more impartial than an administrative court. I heard paeans from the lawyers to the inherent impartiality of the judge which made my hair stand on end. Even L. Scott whom I respect not less than like spoke words to this effect which would make you and your brethren more (or less) than human. I amused myself by quoting with gusto and effect your remark on the judges as "commonly elderly men who hate at sight"¹ etc. which did my side immense good. And then I have been busy helping Arthur Henderson with his speech for the Disarmament Conference which opens in the first week of February.² Altogether I do not feel that I have been lazy.

In the way of reading I have, alas, too little to record, though that

¹ "Judges commonly are elderly men, and are more likely to hate at sight any analysis to which they are not accustomed, and which disturbs repose of mind, than to fall in love with novelties." "Law in Science — Science in Law," *Collected Legal Papers*, 210, 230.

² Arthur Henderson was President of the Conference for the Reduction and Limitation of Armaments, an agency established by the League of Nations. Its first meeting was held in Geneva on February 2, 1932. Henderson's opening speech is in *I Records of the Conference for the Reduction and Limitation of Armaments* (Series A, 1932), 39.

little good. A grand book on La Bruyère by Lange took me to La B. himself. I have never enjoyed him so much. I don't think he is profound as Pascal or LaRocheffoucauld. I think he excels rather in what one may call exterior rather than interior insight. But with that limitation, he seems to me unsurpassed in his *genre*. I should have liked to see him in the House of Condé, neglected and passed over, observing all and revealing nothing until the great book is published and he takes the world by storm. Did the Condés ever know his quality? Did they think him significant even when the book was published? These, I think, are fascinating questions. Lange's book is grand because it makes one at least see all the external influences that played on La Bruyère. I have rarely read a better book of its kind. Then I reread a good deal of Adam Smith. I was tremendously impressed. There is a penetration, an equilibrium, a balanced judgment, a width of view, that are beyond what I have encountered in economists. And, especially, the practical acumen impressed me. The collector of Kirkaldy had missed nothing that came his way. Then I also read the *Life of Sir W. Harcourt* by A. G. Gardiner — too long a book, like most official political biographies, but really good as a portrait. You, I expect, knew him. I was not old enough in his last years even to recollect him as a name; and I fear that he has already become one of those minor figures whom history, cruel jade that she is, leaves to the specialist. But I thought he had a grand combative vigour, and an intellectual honesty rare among politicians. Lastly I must note a lovely edition of Dryden's plays sent me for review I know not why.³ I was amused to find that the editor curses all his predecessors, including W. P. Ker, for their horrid ignorance. But twenty of his forty footnotes of illustrative material follow precisely those of Ker without acknowledgement; which seems to me somewhat of an indirect tribute to Ker unless I mistake me. I could not avoid a wonder whether the plays of Dryden justify six quarto volumes at two guineas apiece; but I suppose that as I do not pay for them I must not look a gift horse in the mouth.

I have been so busy that I have had no time to do an afternoon of book-hunting, and the catalogues have been disappointing so far. They reveal that my own rarities increase in value, but they do not offer the other rarities I want. It is pleasant to see that the collected Bentham has gone up to forty pounds where I paid five, and that the 1679 Year Books are five times what I paid for them as an earnest undergraduate who felt his mission in life depended on knowing them as a bible. But I also note that my Lyndwood (1515) which I have cherished has de-

³ The reference is presumably to the six-volume edition of *Dryden's Dramatic Works* (1931-32), edited by Montague Summers. Laski's review has not been identified. W. P. Ker (1855-1923), literary critic and historian at the University of London, was the editor of *The Essays of John Dryden* (2 vols., 1900).

clined and that for a queer reason I do not understand so have my Edmund Burkes. But it may just be the slump of the moment, with recovery round the corner. By the way, did I tell you that I bought in December in Oxford Bryce's copy of *The Common Law* with underlinings? I have three now, my own, his and one that belonged to Bailhache, J. — the last with the note in his handwriting "this is the work of one of the few judges who ever had the courage to be a scholar." Rather a pleasant word, I think.

Our united love to you, dear Justice. Take care of yourself.

Ever affectionately yours, H. J. L.

Washington, D. C., January 23, 1932

My dear Laski: I hope that I am not going to be confined to sending messages by my secretary, but for the time being at least I find it very hard to write. The doctor seems to think that I am better since my resignation and I really believe that I sleep better, though I don't care much for food. There has been a big chore answering letters &c. but my secretary has done most of it. He is angelic and reads to me even after supper, when he has no duty to be here. A good many detective stories; just now Lea's *History of the Inquisition of Spain* — which I always have meant to read. I think it a poor piece of literature. It does not marshal the facts in a luminous way, but it is very instructive. How can one care what people did who thought as men of the 16th and 17th centuries did about life and religion?

The President's secretary has repeated what the President did on my last birthday — sent me a great package of mounted clippings from the newspapers. I can't take such things very seriously, but I really have been surprised by the semblance of popularity. (I did not mean to let egotism get beyond the first page — but the little devil slipped between my fingers.) I am open to suggestions for reading as I don't expect to have much else to do indoors. When the weather permits there is pleasure in driving out for an hour or two in Virginia or Maryland. One might go to the Congressional Library and turn over a portfolio — but I lack the energy to follow up suggestions of others than those I ask for about books. Frankfurter was here at luncheon last Sunday greatly to my delight — though I didn't get as much time with him alone as I could have wished. And people do come in and call, being warned I think by my watchful parlor maid and secretary not to stay too long. In short I am pretty idle and find it easy to be so for I am tired. This poor little missive must stand for a letter from me. My energy gives out. I do hope that you won't be discouraged from writing to me. Your letters help to keep me alive.

Affectionately yours, O. W. Holmes

Devon Lodge, 30.1.32

My dear Justice: Ten days of hard work since I wrote last. First this incredible government decided to abandon the doctrine of collective cabinet responsibility,¹ and I had hurriedly to write a long appendix to a booklet I am publishing very shortly on the crisis; then Mr. Henderson asked me to help him with his Presidential speech to the Disarmament Conference at Geneva, and, of course, for such an occasion I had to sweat blood to see that the thing was really well done; then I have done a big industrial arbitration which involved trying to understand the boot and shoe industry and settling six separate schedules of wages. So, that, altogether, I have had the feeling that I have earned my keep.

But, mostly in trains, I have read one book which interested me enormously. It is called *American Literature* and is by a man I never heard of named Blankenship. He deserves a medal. There are things from which I fiercely dissent *e.g.* the emphasis on Cabell, whom I believe to be a mere faker, as an important figure. But all in all it is a model of what such books should be — as good in its way as Lanson's *History of French Literature*. It has learning and wit and incisiveness. Now that Parrington is dead, that fellow takes his rank at the very head of the American critics. I do hope it will come your way for I know nothing even to compare with it in its field. I read also an admirable book on France by E. R. Curtius, the late German Foreign Minister. It is rather Germanisch in the sense of searching for quintessences, to which light and shade are sometimes sacrificed for the sake of the thesis. But I don't know a better book to use for explaining what the idea of France is in the history of the last three hundred years. I have also been reading — for a book review — some of Dryden's plays. And I was led by them to the thesis that the difference (Shakespeare apart) between English and French tragedy is that in the former incident is the source round which the treatment coheres while in the latter the essential action takes place in the mind. The result is that with Dryden you are always the spectator *at* the drama while with Corneille or Racine you are an actor *in* it. The editor of this new edition amused me mightily. He begins by attacking all his predecessors as worthless; I supposed that to be true until he turned on W. P. Ker who, whatever his sins, was not lacking in scholarship. So I spent a little time comparing the editions and found (it makes a good sentence) that the first thirty [*sic*] footnotes of the two editions coincide²; and I think that is one up to Ker.

¹ On January 22, members of the Cabinet being in disagreement on fiscal policy, it was announced the four ministers were to be permitted in Parliament to oppose the proposals of their colleagues. See Laski, *The Crisis and the Constitution: 1931 and After* (1932), Appendix, p. 59.

² See, *supra*, p. 1359.

I must now tell you of my great book adventure. I went bookhunting yesterday and was offered a first edition of the *Nouvelle Héloïse* with the Pompadour's arms for seven pounds. I was impressed by the thickness of the back end paper and guessed that something might be there. I bought the book on that chance and adjourned to a café and a paperknife. The thickness was in fact a screen for a pocket in the cover and there I found a letter from Rousseau to his publisher telling the latter to send a copy of the No. 4 to the Pompadour and one from the publisher to the lady saying that she might like Rousseau's note. Well, that was too precious for me, so I decided to sell it and have the money for books. I tried three booksellers and the last offered me fifty pounds for it with which I closed. I left him feeling what I imagine J. P. Morgan must feel when he brings off a big international loan. I am reserving the proceeds for a visit to Cambridge next week-end and a few days I hope to have in Paris at Easter. But you will, I know, sympathise with my general sense of mental elevation.

Felix sent me the very moving letters which passed between you and your colleagues on your resignation;³ and I have lent them to Leslie Scott. As you know, he and I meet twice weekly at the Lord Chancellor's Committee, and he never fails to ask me if I have any news of you. I like him greatly. He is very Conservative and rather slow, but he has an innate sense of justice and a fine integrity of mind. I scan the papers anxiously for the name of your successor. Fitness seems to me to demand that it be Cardozo, but I suppose that three New York members of the Court will not be available. I shall be very angry if it is either Rugg⁴ or Pound.

I hope you will look at the February number of *Harper's Magazine* where there is a piece of mine on the American College President.⁵ I think it is full of common sense but I do not, of course, know what the experts will say to it. I wrote it largely out of the experience of my last visit, and partly in special because Alfred Cohn, the physiologist, whom I much respect, told me that it was needed. It's a curious problem, altogether; and one that ought not, as now, to be taken as effectively solved.

My love to you, my dear Justice. You are never long absent from my thoughts.

Ever affectionately yours, H. J. L.

Please give my warm greetings to Mary.

³ 284 U.S. v-vi.

⁴ Arthur Prentice Rugg (1862-1938) was Chief Justice of the Supreme Judicial Court of Massachusetts.

⁵ 164 *Harper's Magazine* 311 (February 1932).

Devon Lodge, 16.II.32

My dear Justice: I begin by congratulating you on Cardozo's appointment.¹ Nothing, I think, can more securely measure the sense we all have of your place than that he should be your successor. I know it will give you pleasure. And it gives a great tradition security. I could throw my hat to the sky.

I have had a busy fortnight. The most pleasant incident was a weekend in Cambridge where I talked to the lads on law reform. They are quite charming, and full of a zest for life which is exhilarating beyond words. The dons are a different proposition. They all seemed oppressed by over-work, especially in the realm of college administration. They lack fire and enthusiasm and eagerness for novelty. There is a curious fear of ideas in them. I used to think that if one put a university away from the big towns men had an opportunity for spacious reflection. But to judge by Cambridge, its real result is a provinciality which is painful. The lawyer who doesn't "bother with the American traditions," or "feels that philosophic jurisprudence destroys the practical lawyer" or the professor of politics who tells me that if a man knows his Aristotle and Plato he can be indifferent to later traditions or the historian who can write on the social ideas of the Reformation and ignore the fact that it was also a grave economic upheaval seem to me stricken into impotence. The root of it all, I think, is reading for lectures instead of reading for life. One's horizon there gets bounded by considering not the subject as a bridge to the universe but the subject as something divided into so many hourly divisions each of which can only be treated in a limited kind of way. But I had a grand time in the bookshops. I bought a marvellous Kant, and a very interesting collection of the German Cameralists of the eighteenth century. I found, too, a pretty Bentham manuscript which I am going to present to Yale.² It is a digest the old gentleman made at the age of 80 with a view to a book on universal jurisprudence, done in his characteristic tabular fashion, and with that fine sense he always had that work being endless one may regard life as endless too.

In the way of reading, one or two enjoyable things. I found instruction as well as amusement in F. L. Allen's *Only Yesterday* (Harpers) which told me lots of queer oddments that add colour to the picture. C. W. Everett's *Education of Jeremy Bentham* (Columbia) had some pretty touches from unpublished mss. It gave me an added vision of Bentham's

¹ On February 15 President Hoover nominated Cardozo as Holmes's successor; the Senate confirmed the nomination on February 24.

² During the academic year 1932-33 Laski gave two manuscript sheets of Bentham's notes, dated January 17, 1820, and April 21, 1833, to the Yale Law School.

courage and the conviction that if I only had a thousand a year of my own I would sit down to do nothing save write and see whether in that way I could not by sheer devotion make my small dent on the universe. Then, at Frida's order, I read Aldous Huxley's new novel *Brave New World*. I thought it foul . . . like a small boy taking you into a corner to snigger at a bawdy story. The critics talk of it as though Swift might have written it. Why, God knows. No one can fail to see that Swift has a fierce idealism his savage irony only throws into stronger relief. . . . Then a truly remarkable *Histoire de l'idée social en droit* by a Russian exile in Paris named Gurvitch. It is monumental. Full of learning, pointed, suggestive, it gives you a sense of legal philosophy changing to fit new needs which I found really exhilarating. And, lastly, I must not forget to mention Nevinson's book on *Goethe*, published for the centenary, which is really charming.

I have been having long fights, mainly with Holdsworth, on the Donoughmore Committee, over the theory of judicial decision; and that has taken immense time. He has written a section of our report which suggests that in the judicial interpretation of statutes the judge is a purely impartial arbiter who simply decides on the plain meaning of words. I have been insisting on the importance of the inarticulate major premise, e.g. when K.B. says that "educational expenditure" cannot be interpreted to mean that an education authority may pay for children to see a performance of Shakespere the judges have a theory of education in their minds which goes into and colours their interpretation of the Statute. I wish, in your leisure, you would write a short paper for our School journal on "The Judicial Process." It needs someone of your authority to end this humbug of the judge as a soulless automaton whose mind and heart are silent when he performs his operations. And I should of course be proud beyond words to have a paper from you in the journal I edit. If you say you are too old to write, I reply first that this is untrue, and second that Ranke (bless his memory) began to write his *Weltgeschichte* when he was eighty-nine.³ Indeed I wish you would put down on paper your reflections on legal philosophy for us. It would be a grand and exciting legacy fifty years after *The Common Law* to say what has happened to the ethos you then discovered in it.

I was so glad to have your letter. As long as you feel fit and go on reading I feel as though a special sun was still shining.

Our love to you.

Ever affectionately yours, H. J. L.

³ Ranke in fact was eighty-five when he began his *Weltgeschichte*.

Devon Lodge, 23.II.32

My dear Justice: A grand letter from you today. I do admire your tenacity of spirit in being able to work through two volumes of Lea. I have always recognised that the material was grand; but his style and confused arrangement have always appalled me, and though I have often sat down with resolution, I have always desisted from weariness. Sherlock Holmes is a different matter. Things stick in the mind *e.g.* "Do you remember the remarkable incident of the dog in the night-time?" "The dog did nothing in the night-time." "That," said Sherlock Holmes, "is the remarkable incident." Now I assert that the man who could write that did know how to tell a story.

I have been pretty busy since I wrote last week; two days in Birmingham settling a silly industrial dispute needlessly wasted my time. If the parties had been intelligent it could have been done in half an hour. Between you and me, once you are outside the small number of really first-class business men, the only possible explanation of their success is the fact that they have only to compete with one another. I had an amusing dinner with Lady Astor, where I sat next to the journalist Garvin. You do not know what journalism can do by way of breeding egoism until you have met him. He does not indicate opinions; he pronounces oracles, and they are sometimes quite marvellous *e.g.* "The essence of the Chinese problem is their lack of the British sense of right and wrong." "Lincoln represents the manifest destiny of the ordinary American at his best." I do not argue with such men. Duty demands that you draw them on and obtain the maximum delight from their majestic progress. "Never," said he, "have I ever felt so conscious of the hand of God in British destiny as I did when the government decided upon a protective tariff." Imagine this vast voice booming these gigantic conclusions to twenty people who only by effort can prevent themselves from collapsing in quite helpless laughter. Then Frida and I went to a jolly party at the Russian embassy, where we met old George Moore, whom I had never before seen. He is a different type of egotist — the esthetic type who broods on his own introspective results. He told me he had never published any book until he was sure (I) that it was in its way perfect (II) that it had a definite contribution to make to aesthetic technique. He thought Hardy, Meredith, Dickens, Fielding, unreadable. There were exquisite moments in Flaubert and Pater; Balzac could observe, but could not omit. Poets who battled with life lost their purity of gesture. He regretted that I wrote about politics. "You have," he said, "a clear gift of pointed phrase. Why waste it on so low an object." He had once been invited to meet Bismarck but felt that his nerves could not stand it. On the

other hand the mere presence of Manet in a room gave a sense of exhilaration. He was interested in the new Russia as he felt that new and keen impressions could be gained there. He had a happy life by always denying the reality of what displeased him; so, he said, he could always suppress a critic who disliked his work. A very happy old gentleman, conscious that he was a classic, and talking, I am sure, in the hope that his auditors kept notebooks so that the torch of his wisdom could be handed down the ages. He asked me, with a graceful gesture, whom I admired most of living novelists, making an effective pause for the reply. But I took a moment of artful reflection and said "P. G. Wodehouse" which completely disconcerted him as he felt it quite out of keeping with his character to descend to argue with one whose tastes were so wholly unseemly. Frida said it was like watching a minuet on a canvas of Watteau to listen to him, and I think the comparison is not inapt to the scene.

One or two nice books I have managed to pick up. At long last, and after some years' searching, a copy of Hauréau's *Philosophie scholastique* which I have wanted ever since I read it in your house and I think I got a bargain at sixteen shillings. Then a superb copy of the *Opera* of Covarruvias the Spanish jurist. I hope one day to write of that 16th century school and its work. Also a not so nice copy of the Italian and English translations of Bodin, interestingly bound together in a vast folio by one Edward Mendham, Gent. (so he signs himself) in 1662; and a very interesting book on Montesquieu by the President Lavie called *Corpus politiques* in which about 1760 he studies Montesquieu's relations to his predecessors and brings out very well his obligations to Bodin. He also mentions a number of Italian creditors, though not Vico, which I take to mean that the latter was still hardly known in France in the second half of the 18th century, since Lavie was clearly a scholar who knew his way about things.

For the rest, I have been busy with a paper on Duguit for the memorial number of a French law journal.¹ I didn't find it easy to make it plain that I thought he had done a useful critical job without contributing anything of a positive kind to the evolution of doctrine. And I have been putting words together on Tocqueville for a university volume always with the sense that he is a really great man.

We all send you our love as always. And please remember my remark last week that if some of your leisure went to written reflections on the foundations of law it would be a great day for all of us.

Ever affectionately yours, H. J. L.

¹ "La conception de l'état de Léon Duguit," *Archives de Philosophie du Droit et de Sociologie Juridique*, 1932, p. 121.

Washington, D. C., Feb. 24, '32

My dear Laski: Of course the nomination of Cardozo delights me. I hear that the committee reports unanimously for confirmation. I can't suppose there is any doubt. (Later) I hear he is confirmed. I have no news but books — McDougall, (I believe a successor of William James), *World Chaos*, led me to Whiting Williams's *Mainsprings of Men* — emphasizing at not too great length the weight of the imponderable, with working men as with others — these two by myself. My boy is reading to me a translation of *The History of World Civilization* by a German — Schneider — Frankfurter put me on to it. I rather doubt if it is worth the trouble. He seems to think that the Germans do or have done all that is worth doing — so much so that when my lad read a sentence about something done by a German poet, Kleist, I thought he was presenting the son of God in a new light.

Much to my regret we have finished the 6 volumes of Sherlock Holmes. So much better than his successors. I have made a note to inquire about some books mentioned by you. Also I thank you for your *Studies in Law and Politics*. I don't always agree with you but I generally do and admire the learning and power of your presentation. Brandeis has been having trouble with his throat, which has cut down his calls, but he was here a few days ago and I don't think the trouble serious.

(Later) I have got Nevinson's *Goethe* from the Library. I would rather read it than Schneider — who lays down as facts matters of neolithic religion and many others with an absolutism that provokes doubts akin to those I used to feel when White in an opinion pronounced some generality as obvious. Also a book of likenesses *Drawn from Life* (the title) coupled with interviews — one of me *inter alios* — not bad. I remember the author, S. J. Woolf, as pleasant.

Lest I forget it Mary wanted very particularly that I should tell you how pleased she was by your remembering her and your message. You have stood very high in her opinion since you were last here (very likely earlier, but it has been brought to my attention lately).

Feb. 26. I go out to drive in a few minutes but must not keep this note of affection longer.

Affectionately yours, O. W. H.

Devon Lodge, 8.III.32

My dear Justice: First and foremost, a very happy birthday to you. At this time last year I was, I think, listening to your broadcast — an unforgettable moment.¹ And certainly sometime next year I shall do all I can to appear in 1720 and review the universe with you.

¹ On Holmes's birthday the year before, he had delivered a short radio address, responding to the felicitations of the American Bar Association and others.

I have been fearfully busy. I have, for my sins, had to take on the chairmanship of the Faculty which involves a multitude of petty duties of one sort and another, of the kind that the academic is said to like and, if he is I, loathes like poison. But my colleagues insisted on my taking it as the alternative to one of those men who cling by nature to the glories of procedure. Then I have had the closing meetings of Scott's committee on administrative law, a big job as I had to fight hard for important changes and in the end write a careful minute of dissent on the English method of interpreting statutes. I enjoyed it all, as the minute will, I think, show; but it was fearfully hard work. My fight was the old one against regarding a judge as an automatic slot-machine into whom you put the statute and from whom you get a construction in which there is no articulate major premise. When the report comes along you will see that I am supported not only by *Lochner* but also by a grand quotation from Sir F. Pollock who have given me the means of a great peroration;² I even hope to attract support thereby from other members of the Committee. Then I have had to write out a long lecture which has to be published as a condition of delivery; and to do a paper *in piam memoriam* Duguit for a French law journal. The latter was funny for as it got itself written it turned out a somewhat devastating criticism of his postulates secreted within the appropriate eulogies. Altogether it has been a hard time. But I am off to Paris as soon as term is over and that is always a great refreshment to me.

One or two things of interest. I sat at a dinner the other night next to Lord Atkin — the Lord of Appeal. He spoke with immense feeling about you, especially of "The Path of the Law"³ and said that when he was a young man in Chambers Davey had told him to keep a close eye on all your work. Also a long dinner with Sankey trying (I hope successfully) to persuade him to set up a committee of enquiry into legal education in England.⁴ I want, before I die, to get a law school of the quality of Harvard in this country, and with the funds of the Inns of Court that *can* be done if proper steps are taken. We also spent a jolly week-end in the country with Arnold who, you may remember, came to see you in Washington when MacDonald was over in 1929.⁵ He told us much of interest; and what pleased me greatly was his eulogy of Stimson for whose

See Shriver, *Justice Oliver Wendell Holmes, His Book Notices and Uncollected Letters and Papers* (1936), 142.

² See *Command Papers* #4060, pp. 135-137.

³ *Collected Legal Papers*, 167.

⁴ In August 1932, the Lord Chancellor appointed a Committee on Legal Education under the Chairmanship of Lord Atkin. Laski was a member of the Committee which submitted its report in 1934. See *Command Papers* #4663.

⁵ *Supra*, p. 1186.

integrity of mind I have always had a high regard. I also had an amusing dinner at the French embassy where we fought over the question of the French epigram and its quality. I was amazed at the French insistence that their finest saying is Vauvenargues's "Great thoughts spring from the heart"; I plumped for Pascal's "*Partir, c'est mourir un peu*" which seems to me the more magnificent the more it is considered. The Ambassador was the first Frenchman I have ever met who attacked Sainte-Beuve — a thing which excited my horror. He put Villemain⁶ and Scherer above him which seemed to me an impossible judgment altogether. Good as they are, they lack the range and weight and poise of Sainte-Beuve.

I sympathise with all you say of Sherlock Holmes who is the only detective about whom I can re-read. I think that is because Conan Doyle created in him a character who really has an independent existence. Other men's detectives are lay figures your interest in whom depends more on the mystery itself; and when you know the solution you don't bother about the man again. I don't think much of Felix's recommendation of Schneider which the publisher gave me. It seemed to me a third rate piece of bookmaking. Of things I have read recently I had both amusement and instruction from F. L. Allen's *Only Yesterday* (Harpers) — a very elegant and pointed trifle. And a French law book, short but good, by one Morin, *La révolte des faits contre le code* was good indeed. It showed in a most interesting way how the facts of French life had so outgrown the code that the purpose of simplification was no longer served because the interpretative adjustment was less and less possible on the original basis. Then I reread Acton's *History of Freedom* and thought it really in the grand manner, big in conception and big in execution, the kind of book which really opens vistas on every side. And I re-read, too, for lecture-purposes, Carlyle's *Cromwell* with the feeling that if ever there was a man in English history that is he. A noble book, written when Carlyle must have been relatively free from indigestion and saw things in a light fairly free from abdominal acidity.

Of book-buying none for myself — but one great adventure for the school. I got on the track of a rumor that there was a great collection of civil war (ours) tracts at Kimbolton Castle. I went down there and found 2000 all uncatalogued and many quite unknown. So I persuaded the Governors of the School that it was a great thing to put them at the disposal of students and that they were worth £700. They authorised me to treat with the Duke of Manchester and I got them for £600 from him. They are superb — 79 not in any catalogue and 143 not in the

⁶ Abel François Villemain (1790–1878), literary critic; author of *Cours de littérature française* (1830). The French ambassador at this time was Aimé Fleuriat.

British Museum. I am making a careful list in my spare time and really enjoying it. Don't you think that a good day — a real application of *sic vos non vobis*?

Our love to you. Please tell Mary that while she keeps you well, I am her humble slave.

Ever affectionately yours, H. J. L.

Washington, D. C., March 18, 1932

My dear Laski: You are in the middle of affairs and I am out of them altogether. I find idleness life-giving — I get up late — have a motor drive — this morning to Mount Vernon and back in an hour and a quarter — easily brought down to an hour. After luncheon my secretary reads to me and people call. I write the few letters that I attempt. I find these come hard as I have told you before. Don't let it stop your writing, I hope, though I hardly have the right to ask. My lad read to me C. D. Broad — *The Mind and Its Place in Nature*. I found it difficult to follow and not worth bothering about — though he is sharp enough. All manner of other things. We are just finishing *The Double Heart* about Mme. de l'Espinasse — rather good and written as if the author, Naomi Gwladis Royde-Smith had had some experience in the business.

Wigmore has praised Stimson's *My United States* but I hardly believe him. The "my" excites my prejudice — *et superest ager* as ground for criticism, for Stimson is clever and can be very agreeable¹ — perhaps I may venture on. His name reminds me of the Secretary of State who comes here from time to time and who certainly is very pleasant. Your pamphlet on the Crisis and the Constitution has come and I am reading it. Also Keynes, *Essays in Persuasion* — gifted cove — I suspect dogmatic and unprepossessing but seeing things.

In short you amaze me by your activities and help me to realize that I am finished — but I hardly do. I still enjoy life — but I must shut up.

Affectionately yours, O. W. Holmes

Devon Lodge, 26.III.32

My dear Justice: This is the first breathing space I have had for a fortnight. A visit to Glasgow, a sojourn in Manchester, and a long industrial arbitration for the Co-operative people have overwhelmed me. The latter at least had the merit (I should have said the last) that for the next month I shall be able to recite backwards the wages and hours of the boot and shoe operatives of England.

At least I have had time in trains and in dingy hotels at night to read. There is so much to tell you on this theme. I warmly commend a

¹ Frederic Jesup Stimson (1855–1943), author, lawyer, and diplomat.

book by one Guerlac called *Les citations françaises* which I imagine you can get from Stechert in New York. It is a collection of French aphorisms from the earliest times, and I have had some delightful hours with it. One phrase alone, of Léon Blum, describing revolution as "*légalité en vacances*" is almost worth the price of admission. It interested me to find that La Fontaine and Molière have easily contributed the most remarkable dicta to the list; though I think the most distinguished are one or two from Montesquieu and Chamfort — the former's "*Les pires mésalliances sont celles du coeur*" is, I think, magnificent.¹ Then I have read Vinet's *Études sur Pascal* — a great book, full of a great spirit; not the judgment I should make, and omitting the part played by fear of the unknown in the formation of Pascal's mind, but still a very moving performance. Then a good essay on recent French jurisprudence by Mlle. Piot, in which she very skilfully takes to pieces Duguit, Jèze, Hauriou *et al.* Her conclusion, that salvation is to be found in St. Thomas I find less appealing than her analysis but she is a good logical analyst with something of the pungency of Morris Cohen. I also enjoyed a *Life of Robert Emmet*, the Irish revolutionary, by R. W. Postgate. It is an extraordinarily moving tale, and explains the character of Anglo-Irish relations with great ability. Also it told me a thing I never knew before that McNally,² who always appeared with J. P. Curran in the trials of their patriots as their junior counsel, was throughout a spy in the pay of Dublin Castle. He even communicated to government the information afforded him by Emmet in their relations as client and counsel. That eighteenth century Ireland leaves a taste in one's mouth nastier than any other episode in modern British history. Postgate tells the story admirably — no eloquence but a simple record of fact which is twice as damning as adjectival emphasis would have been. And he makes it clear that once any government neglects profound grievance there is no infamy to which it will not be driven to stoop in order to conceal the wrong it is doing. I have also dipped into a vast work sent me by Louis Boudin on your court — some useful matter, but I should have said a many-headed book since (I) your constitution makes judicial review inescapable, and (II) if the Court goes one way and Boudin another that isn't usurpation but the divergency of view upon the nature of the good, which is inevitable in any society. I think it lamentable that so many of your bretheren [*sic*] have been closed minds dealing in dubious absolutes; but I did not feel that Boudin indicted them successfully for any crime except the closed mind. And I feel difficulty in bringing in a verdict against them when I

¹ The aphorism "*Le pire de toutes les mésalliances est celle du coeur*" was Sébastien Chamfort's (1741-1794), not Montesquieu's.

² Leonard MacNally (1752-1820) was informer against many other revolutionaries than Emmet.

know that I should have done just the opposite and been charged by them as Boudin charges them. The thing that destroys the world is the inability of men to realise that they really are not infallible.

Someone sent me the report of your birthday dinner.³ I wish I could have been there. I was glad to see that the English bar spoke proper words fittingly. I was very moved by a note to me from a quite unknown English barrister the other day saying that he had bought your *Collected Papers* second-hand and was so inspired by the "Path of the Law" that he felt impelled to write and thank me for having got them together. And I was pleased beyond words when a reviewer in the *Times* of my recent volume of essays drew special attention to the one on your political philosophy and said that it was "a superb portrait of the ideal judicial mind."⁴ You see that a prophet is not without honour even outside his own country. I press again my yearning that some of your leisure should go towards writing at your ease — especially on the foundations of law. And sometime I want to tempt you into telling me what you think of our English rules of statutory construction. I have written in the Donoughmore report a careful memorandum to the effect that they are too narrow — that from the words of the Statute itself it is not effectively possible to gather the intent of the legislator. I got a good deal of support on the committee from the civil servants and the members of Parliament, but Leslie Scott and the lawyers, somewhat to my surprise, seemed to think that there was no problem save one of drafting, which I find it impossible to believe. It seems to me that cases like *Priestly* and *Fowler*⁵ in its impact on the theory of liability show clearly that no amount of good drafting can prevent a strong judge like Bramwell from reading a statute in the context of his unconscious presumptions about the wisdom of the legislation involved. And once questions of reasonableness come in, whether under our system or yours, I think it is imperative to guide the judge *either* by the kind of brief Brandeis put in in *Muller v. Oregon*⁶ or by affixing to the Statute a memorandum of explanation which defines beyond the compulsion of the operative words of the Act itself the pur-

³ At its Annual Dinner on March 8 the Federal Bar Association had paid birthday tribute to Holmes. A message from the English bar was read at the dinner. See 1 Federal Bar Association Journal 34 (March 1932).

⁴ In the *Times* Literary Supplement for March 17, 1932, p. 181, the reviewer spoke of Laski's "masterly discussion of the political philosophy of Mr. Justice Holmes which few Americans and possibly no other Englishman could have written."

⁵ 3 M. & W. 1 (1837). The case established that a servant may not recover from his employer compensation for damages which he suffers as a result of the negligence of a fellow servant. The opinion in the case was delivered by Lord Abinger.

⁶ 208 U.S. 412 (1908).

pose it is intended to serve. But I shall send you the report when it appears next month and hear where and why I am wrong.

I have abstained from book-buying this last month as I am off to Paris for ten days on April 7 and propose to have an orgy there. I did bid at Auction for a grand copy of the Selden Society's publications, for which my heart yearns, but it went far beyond my possibilities.

Our love to you as always.

Ever affectionately yours, H. J. L.

Devon Lodge, 3.IV.32

My dear Justice: Your letter was very welcome. Be sure that I shall go on writing. For it's the next best thing to talking to you, and so long as I have an occasional note from Eye Street to say that you are well I am more than content.

I have had a really pleasant week, free from all cares except a couple of lectures to workmen. The latter were interesting as there was a strong group of communists among them, and answering their questions was a grim job. It amused me to watch their anxiety to make the best of both worlds *e.g.* (I) how dare the bourgeois state suppress working-class freedom of expression (II) Russia is entitled to suppress bourgeois freedom of expression because that threatens her safety. Pressed by me on the lines of *cet animal est méchant*, the answer was that the proletariat being, historically, the rising class, it is entitled to different principles. I had a happy time with them. Otherwise, I have been reading quietly, writing a little, and seeing friends at dinner. Last Monday we spent with Sprague, the American adviser to the Bank of England. He was very gloomy about the outlook, mainly because it seems so difficult to persuade the nations that freedom of trade is their one secure road to survival. And I could not, I fear, comfort him. Then an amusing lunch with Garvin the journalist who was so magnificently *ex cathedra* in his pronouncements that I told him he could make a fortune by giving lessons in the nature of infallibility to prospective papal candidates.¹ Some of his judgments were too magnificent not to quote. (I) Every American feels instinctively a special kinship with the English people. (II) What has made Great Britain what she is is the fact that her business men have always been passionate idealists. (III) In the last nine months there has been a moral renaissance in England — otherwise the income-tax returns are inexplicable. (IV) The special mission of England is to assure fair play by and among the other nations. Imagine these judgments delivered by a great bull of a man, without a smile, and with the earnestness of a prophet in

¹ Laski wrote of Garvin in the *Daily Herald*; reprinted in 341 *Living Age* 514 (February 1932).

ancient Israel. Then I went to dinner with old Birrell, now over eighty, and had, as always, a delightful time. He began by saying that he was in sackcloth and ashes. He had always unduly belittled Matthew Arnold. He now thought him a great essayist and a great poet. He regretted the revival of Tennyson, who was a poet for milkmaids — pretty verse meant to be hymned by a choir in a country church. He thought Hazlitt remained the supreme *causeur* among essayists and “My first acquaintance with poets” his supreme *causerie*. He asked me why it is (I could not answer him) that conveyancers, who have so marvellous an experience of precision in English, almost always write books which are heavy and confused in style. The only exception he knew was Challis on *Real Property* which had, he thought, exquisite limpidity. He thought criminal lawyers had a good sense of humour probably by compensation as a refreshment from their job. He talked a good deal about Sir William Anson whom he compared to an ostrich — in the distance the body looked most dignified, but when you got near the head was buried in the sand. I told him some tales of Vinogradoff and he said that Maitland once brought V. to dinner to Morley’s. The latter said something about chancery lawyers and this started off V. on a monologue about the early history of chancery which lasted for half an hour. They all looked on helplessly until he finished when Morley broke in with some talk about an aphorism of Goethe’s which led V. into another vast monologue on the influence of Goethe on Russian philosophy. Birrell in despair led the conversation round to electoral talk (the election of 1895); but this only started off Vinogradoff on the philosophy of English freedom and its probable relation to the Protestant tradition. Birrell said that Morley was furious, Rosebery aloof in aristocratic *hauteur*, and Maitland grinning like an Italian circus man whose well-intentioned bear has got off the chain and really thinks he is pleasing everybody by gloomy pawings among the audience. Can’t you see the picture?

In the way of reading I commend to you warmly Sir Arthur Salter’s *Recovery* (Century) the best book on the world situation since Keynes of thirteen years ago. It is a real masterpiece of wisdom. I have been reading also with great pleasure Marcel’s *Tocqueville*, a good and revealing book. And I have had much pleasure out of Chassin’s *Génie de la révolution*, an old book — the seventies — but one which had not previously come my way. It explains and describes the atmosphere of 1789 better than any other book I know; and it is particularly good in its picture of provincial feeling.

I was moved by the death of F. J. Turner the historian. I knew him intimately at Harvard, and learned a great deal from him. No one I ever met had a sweeter nature; and I always thought that his insight into

the conditions which have made the American pattern were more profound than any his contemporaries showed. I hadn't seen him for twelve years. Yet he remains in my memory as one of the great experiences of my Harvard days.

I am off to Paris on Thursday. So I hope to tell you of conquests next week.

Our love to you. Keep well. Maybe the decline in Atlantic fares may enable me to steal over one day if I get a windfall.

Ever affectionately yours, H. J. L.

Washington, D. C., April 9, 1932

My dear Laski: Your letters are such a pleasure to me that I tremble to think of their being interrupted by my failure to come up to them. You will remember and allow for my difficulties. *Inter alia* I have gone back to Virgil. A few years ago I reread the *Eclogues*, the *Georgics* and the first six books of the *Aeneid*. I like to have a translation on hand and had none after book 6. Now I have one and my secretary reads the English while I read the Latin. But this is at odd moments — a break in the serious business of murder cases — but alas there are few good ones. Sherlock Holmes is not equalled by later tales. I think you recommended the best: *The Lost Gallows* — (Carr). That keeps the tone throughout. I reread *The Moonstone* (W. Collins) the other day and thought it the best of all. Of course I read your political pamphlet with proper awe in the presence of things I know not of. I am insisting to myself that I have outlived duty and have a right to be idle. I greatly enjoy being so. The notion of writing recollections and reflections I abhor. I might attempt a statement of law in my own terms — with no rights or duties, but I have only a few sentences in my head and I don't want to work. Is not a man of 91 free? Cheer me up and don't give me any damned exhortations. But I am very grateful for recommendations for reading — not in German except in extremest exigency. English much preferred because mainly I am read to by my secretary. It would be good, if you made a little list. But I have no right to bother you and don't mean to. A good many people come in the afternoons. The other day for the first time of recent days Mrs. Longworth (Alice Roosevelt) very pleasant — and at intervals several good-lookers. 7 cherry trees have come out around the Potomac basin — but today when they should be expanding it rains hard — and I fear the result. I do so enjoy the successive flowerings of the spring. I am afraid you don't care quite so much for them. No high thoughts for today — but affectionate ones from

Your affectionate O. W. H.

Devon Lodge, 17.IV.32

My dear Justice: I got back yesterday from ten most happy days in Paris. The first three I spent with the International Institute of Public Law. Of those I met there, Kelsen of Cologne, certainly the first German jurist of the day, was the most interesting. A profound philosophic mind, quick, agile, and widely read. He interested me greatly by his comments on our friends. Pound he rated on the whole low; "a mass of undigested learning," he said. He thought well of Morris Cohen with the limitation that he had an evil tendency to score dialectic points. His great God was Maitland whom he — wisely — never ceased to praise. He knew you well through the German translation of *The Common Law* and asked why so few of your successors at Harvard had seen the necessity for pursuing your combination of the comparative-historical method with a system of hypotheses. Of the others I liked much a Spaniard who was no great shakes but most charming and at dinner gave me a great account of the night of the King's abdication when they did not know from one hour to another whether he would go without bloodshed or not.¹ Then I spent two long mornings with Meyerson the philosopher — a really grand old fellow. We fought over many things; but he pleased me greatly by his bitter contempt for the neo-Thomist revival and his criticisms of Eddington, Jeans *et al.* for trying to get religion back by the side-door of the new physics. I was surprised at one or two things he said: he is one of the first men in the world in the history of science and he took the view unhesitatingly that Leibnitz had the right on his side in the controversy with Newton over the calculus. He spoke with much appreciation of Dewey's later works but with a good deal of doubt over his earlier. I was amused too at the anger which Bergson aroused in him — *l'apôtre de la réaction contre le rationalisme — le pierre de la néo-Catholicisme — lui petit juif*. And when I left and asked him what English books he would like me to send him, he pleased and surprised me by asking for P. G. Wodehouse. He had recently discovered him and was in the proper frame of mind. "You English," he said, "are the only people in the world with a nonsense-literature which a man can read with pleasure." Then I had a jolly evening at Chevalley's, the old diplomat, where I met André Gide whom I liked, but did not understand, Maurois, whom I understood,² but thought altogether too charming, and a clever young fellow named André Billy who has just written a really good life of Diderot. Maurois is the real Frenchman who used as a *petit abbé* to

¹ King Alfonso had left Spain in April 1931, following a bloodless revolution by the Republicans.

² Laski wrote of André Maurois in the *Daily Herald*; reprinted in 344 *Living Age* 332 (June 1933).

decorate an eighteenth century salon. He never says anything profound, even by accident; but everything he says is charming, and nearly everything is perfectly phrased. I also had dinner with our Ambassador,³ a clever fellow but something of a Metternich, with his nose in all sorts of dark corners sniffing for scents which are not there. I thought the France he knew gravely limited in character; and if I were our Foreign Office I should feel very unhappy at the limitations upon the kind of opinion upon which he could report. He was, also, far too anti-German for my liking, in that sense rather a hang-over from a dead age. I met, also, a very attractive young Harvard professor named Friedrich⁴ who has just published (I have not seen it) an annotated edition of Althusius — at least an interesting thing to do. But he was a little solemn and portentous and did not quite like my teasing him about attaching momentous importance to minutiae. He had the right views about McIlwain and Lowell; but he had an immense, almost idolatrous worship of Pound, built, I gathered, on Pound's capacity for the footnote. And when I teased him about this I had the sense that I was committing sacrilege. I told him that if Pound found that it was necessary to say that the bathroom had made large developments in America he would put in references (a) to the *Sanitary News* (b) to the *Plumbers Journal* and (c) to the Commerce Department's report on the increased manufacture of lead-less glaze together with a note to the effect that there was a Czech thesis on the sociological significance of the American bathroom which he had not seen.

Sir, I beg to report that the hunting of books was most happily effective. I got a beautiful copy of Perrault's *Vie des hommes illustres* which explains how the 17th century looked to itself. It begins with Richelieu and ends with a most charming note on my hero Jacques Callot. Then I got some attacks on the *philosophes* of the 18th century which are by way of being rare, especially a defence of St. Bartholomew by the Abbé Caveirac. I bought a nice edition of Descartes which gives the house, as Frida says, the air of a super-tax payer and a good collection of the *Voyages imaginaires* which the Abbé Prévost edited — a thing I had long coveted as I believe they are very influential as the precursors of the *Lettres persanes* and Rousseau's two *Discourses*. I picked up also some of the answers to Pascal written by the Jesuits of the time — such as I have read, distinguished rather for mental agility than for meeting

³ William George Tyrrell (1866–1947), first Baron Tyrrell, was British Ambassador in Paris from 1928 to 1934.

⁴ Carl Joachim Friedrich (1901–) had been in the Department of Government at Harvard since 1926. Laski reviewed his edition of the *Politica Methodice Digesta* of Althusius in 4 *New Statesman and Nation* (N.S.) 186 (Aug. 13, 1932).

the point. Of modern things the best I got were a long run of Cournot⁵ — a remarkable fellow for his day — and some of old H. C. Carey's stuff which in England has become very dear. It was happy hunting, and the French booksellers, as always, were a joy. They treat one as a friend. One old lady, Mme. Belin, who has the best shop in Paris, gave me the run of it as though I was in my own study and showed almost as much pleasure when I found something I wanted as if I had been a millionaire to whom she was making a good sale.

Well! My love to you, my dear Justice. I am eager to hear how things go with you.

Ever affectionately yours, H. J. L.

Devon Lodge, 23.IV.32

My dear Justice: A grand letter from you followed on the heels of mine going Westward. You ask for names of books — and I assume that you want a combination, like Artemus Ward, of amusement and instruction. I read this week a life by Ernest Kantorowicz of *Frederick II (Stupor Mundi)* which I think would tickle your palate; and a really amusing and exhilarating study of *Mme. de Staël* by R. McNair Wilson which set Frida and me discussing for hours. Then I got much instruction from an admirably written book on Hume by John Laird which I commend very warmly — not the usual academic angle, and, in addition, some fresh and original material. I have also read with great interest a new life of *Fontenelle* by J. F. Carré (Alcan) which I think would give you a good deal of interest. It explains awfully well the transition between the 17th and the 18th century; and it shows — a thing one too little realises — how profound was the naturalistic and humanist tradition which went on growing from Rabelais to the philosophers behind the elaborate façade of the classical tradition and the religious revival. It is a rather big book, but I think one can honestly say that there isn't a word in it unnecessary to the purpose. In the way, also, of what the French call the "*vie romancée*" I enjoyed a life of Brissot de Warville by J. F. Primo — really amusing, full of novelty to me, and a very striking picture of the journalistic *dessous* of the 18th century. The only defect is a tendency on the author's part to be somewhat excessively intimate with his reader, rather like a man who *will* whisper in your ear instead of speaking to the company at large. But emphatically a jolly book about a really interesting creature.

As this has been the last week of my vacation I have spent it idling very pleasantly. We went to hear a discussion on the state of the world by eminent economists and business men which amused me greatly. One

⁵ Antoine Augustin Cournot (1801–1877); philosophical mathematician and economist best known as a theorist of chance.

man read out a programme of the measures necessary for salvation and explained that it was impossible to hope they would be carried out. Another saw the only hope in Russia which he had not visited and did not propose to visit in case he suffered disillusion. Then came the *pièce de résistance* in which a most eminent business man explained that the woes of the world had come because we had forgotten Christianity; by which it appeared, to our astonishment, that he meant the gold standard. Then an eminent economist suggested (I) that America should go Free Trade (II) that the world should disarm and (III) that the working class should accept a thirty per cent cut in wages. At that point we went home feeling, as John Bright once said, that the worst of great thinkers is that they will not think greatly. We also had one of the most amusing dinners I have had in many a day with Behrman, the American playwright. He has been working at Hollywood and his picture of its habits was just one glorious farce. He told us how a film company decided to do a movie for children. After various attempts none of their scenario writers could do an adequate dialogue. So a man was got in from another Company on the condition (I) that he was to have two thousand dollars a week for writing the scenario. (II) As the other writers had made their efforts towards the text their names were to appear with his on the screen; in consideration of which, as he was to do the work, he was to receive an extra 500 dollars a week. When the first night came, to his utter amazement, his name was the only one on the screen and not one word of the text was his! He told us also how his company had bought the screen rights of an English play for one hundred thousand dollars; when they got it over, they realised that as all its episodes represented English history it would not be very intelligible to an American audience. So they decided to scrap everything but the title and to fill it in with episodes from American history instead. After dinner he introduced us to a "star" who was in the hotel. She asked me what I did. I explained. She said "Gee! Isn't that a job that taxes your bean?" I said modestly that I did my best. She then said "Gosh! I guess I should register fatigue," and then lapsed into complete and panicked silence. I wish I were an artist and could draw for you the marvellous expression of pained astonishment on her face. We had one other adventure worth recording. We were invited to dinner by a friend who gave us an address with the number 5. When we got there we found 5a, 5b, 5c and took the risk of 5b. We rang and the door opened by some electric arrangement. In the hall was a printed notice inviting you to walk up to the studio on the first floor. We did so and found two complete strangers seemingly engaged in a most passionate love scene — the lady in a dressing gown having her last overt resistance broken down. They waved us to chairs and our feeble protests of error went unremarked until the lady suddenly said "Joe, I think we

shall have to do that scene again" and we were allowed to steal away to 5b. But it was very difficult to recover serenity of mind.

And lastly I must report that I received from New Mexico a request for an explanation of my habits of work and words of counsel and encouragement to young students who wish to emulate my example! I am not often baffled; but that did really stump me.

Our love to you.

Ever affectionately yours, H. J. L.

Devon Lodge, I.V.32

My dear Justice: A week full of the alarums and excursions which always accompany the beginning of term. Masses of new students, unending committees, and the fatigue of getting back into a half-resented routine. But there are incidents which water the torrid earth. Imagine an American student, to whom I had commended the reading of Kelsen's *Allgemeine Staatslehre* during the vacation, "Oh baby! some thinker that!" Or, again, the Spanish professor who finds me unwilling to be positive upon certain points of doctrine and says that, in Germany, a *savant* never says "perhaps." I really enjoy it all; and when, as this term, the students in my department sweep up all the prizes in the university I find myself clucking like a really contented hen.

I went down to Oxford over the week-end and had an interesting two days there. I am tempted to the generalisation that, in my themes, Oxford breeds elegant learning rather than real profundity; and the conversation implicitly assumes that Oxford is the centre of the universe. There is a vacancy in the Wardenship of All Souls; and it was amusing to find that one or two eminent public men are being considered for it on the basis that of course they would be happy to give up their political work for the chance of so profound a position. I met a number of the law dons at lunch at Arthur Goodhart's. There were a most pleasant crowd; but I should have said very emphatically that they did not even begin to compare with a random sample taken from Harvard or Yale. They had more elegant and cultivated minds; but they had nothing like the thoroughness which a Harvard man brings to his job, and I should have said that they tended to lack the speculative faculty. And they all suffer, as lawyers, from an incredible regard for the House of Lords, and an inability to realise that the Common Law lives also in other climes. It was, I thought, characteristic that not one of them, except Goodhart (who is American) read the U.S. Supreme Court reports; and when I said, talking of the judicial function, that you and Brandeis had shown a profounder appreciation of *Heydon's case*¹ than any of our judges, that, as a general

¹ 3 Rep. 8 (1584). In this decision Coke formulated the basic principles of statutory interpretation to which the common law thereafter stood committed.

rule, American canons of statutory interpretation were ampler for their purpose than the British, there was a smile of polite incredulity which grew out of an ignorance I regard as lamentable. I believe, you know, that universities ought really to be built in great towns. To cut off the student of humanities from the main stream of affairs is to set him contemplating his own navel with equanimity; and it really isn't good for him.

But the bookshops were a feast. I picked up a grand folio of Suarez's *De Legibus*; before I only had a poor modern reprint. I found Forbonnais's critical study of the *Eprit des lois*² — a very interesting document as a kind of link between Montesquieu and the Physiocrats, and a nice copy of Mariana, all for a pound and all giving me great pleasure. You would have been amused at a theological library on sale there — of a well-known preacher. It was in part a collection of sermons — about 2000 volumes — and in part a collection of intimate gossip about royal families. I assume that the canon read the second and fished about in the third for passages suitable to them. I was amused to find a letter of his to Queen Victoria of regret at the death of the Duke of Clarence printed in a private obituary of the latter. It was some ten pages long and was a quite literal, unashamed and unacknowledged translation of one of Bossuet's funeral orations; and the memoir said that no letter moved the Queen — no wonder — quite so much and that it was the reason she made the gent. resident canon at Westminster. I felt tempted to publish the story as a study in the art of gathering rosebuds; but as the son is still alive I came to the conclusion that a quiet chuckle was ample reward.

In the way of reading one or two things are worth noting. The new Oxford edition of Hume's *Correspondence* is a delight — two volumes fully on a par with the very best of Horace Walpole. The letters to Adam Smith and those anent the row over Rousseau are simply fascinating. That led me to a new book on him by Professor Laird which is very well done and even better written. I also read an admirable novel by Beatrice Kean Seymour called *Mistresses and Servants* which I commend to you and the first volume of a very interesting study of Taine by André Chevrillon. Honesty compels me to add that I tried to read the new stories of Kipling³ and was compelled to say Ichabod though Frida assures me that I am wrong and that the old magic is still there. Finally I must mention an old book though new to me, *Le salon de Mme. Helvétius* by A. Guillois which is like an elegant minuet.

I went to the private view of the Royal Academy — three miles of

² The title of the work of François Véron de Forbonnais has not been ascertained; see Carcassonne, *Montesquieu et le problème de la constitution française au XVIII^e siècle* (1926), 127-129.

³ *Limits and Renewals* (1932).

pictures of which two only — one by Orpen and one by an unknown youth — struck me as significant. The portraits were intolerable, and the landscape tried to be realistic by being photographic. And I read that the President thinks no other nation could produce so notable an exhibition! O God!

My love to you, dear Justice. When do you trek to Beverly Farms?
Ever affectionately yours, H. J. L.

Washington, D. C., May 3, 1932

My dear Laski: The only things of which I can tell you are books that I have read or more or less listened to. One of the last is Spengler's 2 volume (translated) *The Decline of the West*. I read volume 1 with a dictionary when it came out, but the translation makes it easier — though it is not always easy — and comparisons with the State of Egypt under the —th Dynasty, Rome under —, Arabia in X A.D. &c &c convey nothing to me. He certainly is an able and learned man — but I can't measure his pretensions. In view of his suggestion that philosophy is the insignificant reaction of a given personality, varying with the makeup, I hardly understand his ambition to make the philosophy of Germany — and I hardly can doubt that he has an abnormally swelled head. Have you views about him? We have just begun McIlwain's *Growth of Political Thought in the West* — sent by Felix. Stories by Locke who I think has some charm. Yesterday we drove out to an apple orchard with 7000 apple trees in flowers — which was pretty fine. And today at last Cardozo (my successor) came to luncheon — with his beautiful face and nature. So I idle along and expect to go to Beverly Farms on June 8. They have been putting an elevator into my house there — so that I still can sleep upstairs and shan't have to receive people in my bedroom. I think more or less on death but don't worry and seem at present likely to last for some time.

Affectionately yours, O. W. Holmes

Devon Lodge, 8.V.32

My dear Justice: I am sending you separately our Report on Ministers' Powers which may, I think, interest you, at any rate to glance over, as most of it is the work of Leslie Scott and myself; and I venture to hope that the note of dissent I was driven to write will command your assent. That was one of the few points on which Scott and I could not agree. He seemed to feel that judicial interpretation was solely a matter of good drafting; and I believe that, schooled by you, I belong to a wiser tradition.

I have had one of those busy weeks upon which one looks back at the end and wonders to what exactly it amounts. Committees, lectures, the

Indian students annual dinner, the dinner of the Rational Press Association. The latter was made interesting by a really fine speech from J. M. Robertson who contributed to me really fascinating memories of Kingdon Clifford and Bradlaugh. I should much like to know where the militant secularism of the working-class, to which Bradlaugh used to appeal, has gone. So far as I can make out that kind of fighting spirit, which used to read Tom Paine's *Age of Reason* by the hundred thousand, makes little appeal. Yet the need for a militant temper in the religious field is just as great as ever. If the fight is stopped for one day whether in education, or Sabbatarianism or what not, you find the clergy creeping back to its old positions. Robertson's picture of Bradlaugh hissed in the House of Commons by men who later fought for the honour of being pallbearers at his funeral was very arresting. He also told how, as a young man, brought up in a pious Scottish home, he had heard Kingdon Clifford lecture to a workingmen's Sunday lecture society and came away feeling that a new universe had opened before his eyes. It was impressive to hear him say that no man he had met since seemed to him to have embodied so completely the ideal of the scientific temper as Clifford. Robertson, then a printer's apprentice, wrote to him for books and advice on study; and for three years Clifford directed his reading as a teacher might the work of a disciple for this unknown boy whom he was never actually to meet. The story moved me profoundly; the kind of thing that gives an extra sweetness to life.

I had one visitor this week whom I wish you could have seen, for he might have been a character out of a P. G. Wodehouse novel. He literally bounced into my room and announced that he was from Minneapolis. He had been reading some of my articles in *Harper's*, and felt (yes, Sir) that I had a message for the middle West. I must go out there at once and put my story over and (yes, sir) it would sure go big. OH! baby! I was some thinker, and he wasn't going to pass through this little burg without shaking me by the hand. There was a ladies' circle in Minneapolis which would sure be proud to listen to my exposition of the deeper and higher truths. His wife was a deep thinker and a follower of the great Bahai movement. He could not explain it himself as he was just a plain business man who made (yes, sir) the finest ladies' corset in the finest factory in the United States. But his wife was a deep thinker and had already given eleven addresses to Congresses of women's societies in America, seven to state-wide assemblies and four to nation-wide. His wife felt that my work was lacking in the deeper spirituality, but, say, I had a kind of cutting wisecrack which she sure did appreciate. Please imagine me reeling before the impact of this terrific barrage, bleating feebly that he was very kind, being smitten heartily on the shoulder to emphasize each point so that no sooner had I swayed back from one

blow than I was swaying again forward. I was nearly ill with suppressed laughter, and yet I could not help being touched by the man's simple pride in his wife's achievement. Evidently for him she was a great person; and he wanted to talk about her under cover of delivering an invitation. He stayed an hour, during which my colleague Ginsberg, who is Professor of Sociology,¹ drifted in. "Say, Professor of Sociology. Dr. Ginsberg, I want to say to you that that sure is a deep subject. Mrs. ——— is very strong on sociology. She says that the United States needs to give more attention to it. She told the Women's Congress at Saint Louis that we needed to think sociologically if we were to get out of the depression." Can you see this little *preux chevalier* going home to tell Mrs. ——— how the two English professors were very greatly impressed by her way of looking at the universe and how happy he would be when she purred a sentence of content. But he really ought to have met P. G. Wodehouse.

Of books one pleasant find, a grand copy of the *Oceana* which belonged to old Tucker, the gloomy dean of Gloucester,² and a rare little attack on monarchy by Fortin which is one of the few really radical productions of the Fronde. But I have mostly been reading the wholly delightful new edition (Oxford: by Greig) of Hume's *Letters*, many wholly new, and most in full for the first time. They are grand; they make Horace Walpole look like five cents. I conjure you by your belief in the right to pleasure to get them quickly. And they are grandly edited.

Our love to you.

Ever affectionately yours, H. J. L.

Washington, D. C., May 15, 1932

My dear Laski: My secretary tells me that by a rough calculation we have read 4,500,000 words since we got here — some of them just buzzed through my head. Do speak ill of that accursed Spengler, *Decline of the West*. It is not lawful to know as much as he assumes to know. *Per contra* this p.m. we began Sir A. Salter — *Recovery* which I like very much — though I don't think the now unfashionable *Laissez-Faire* has been disposed of yet.

Wodehouse is a joy every time — we even have reread some volumes.

I expect to go to Beverly Farms on June 8 — and drive there at once from Boston on the 9th. I suppose I shall find an elevator put in. I am not allowed to walk upstairs. I am enjoying my idleness vastly. I think of death, but don't worry.

Affectionately yours, O. W. Holmes

¹ Morris Ginsberg (1889–), Professor of Sociology in the University of London since 1929; author of *Reason and Unreason in Society* (1947).

² Josiah Tucker (1712–1799), economist and theologian whose critical superior, Bishop Warburton, is said to have considered that the Dean made a religion of his trade and a trade of his religion.

Devon Lodge, 16.V.32

My dear Justice: The week-end was made sweet by a delightful letter from you. I am so grateful, for to have a glimpse of what you are doing and thinking is really important to me. I envy you the lunch with Cardozo. He is a beautiful nature in every sense of the word.

I have had a full week. Dinner with Sankey to discuss the details of this government committee on legal education. I think I shall get it out of him, and even persuade him to appoint some of the people who are likely to do a real job. It will be grand if it actually comes off; for though Westbury when he was Lord Chancellor saw the need of it nothing has really been done consciously to plan the matter, and the amount of waste in the present system of things is appalling. Then I went to a long discussion of the Labour Party executive to advise them on necessary constitutional change—an interesting job in which I found much more sympathy for the things I regard as urgent than I hoped. I was very amused in trying to persuade them of the need for a smaller and more integrated cabinet to find that my critics were the politicians who might be in a cabinet of say twenty the next time Labour is in but would certainly not find a place in a cabinet of a dozen, which is the proper size for the problems involved. Then I spoke to a big teachers conference on the relation between the schools and the universities in which I was fascinated by the clear fact that for the teachers they were natural enemies and that the methods of collaboration I had come to propose were almost a new way of life for them. The whole atmosphere was a curious and interesting comment on the aloofness of the universities from the real problems that confront them. Their well-being depends largely on the schools; and they have never really thought through what the relationship ought to be in order to make it a creative one. On top of this Abraham Flexner came to dinner and we had a grand talk out of which two main themes emerged which are, I think, worth putting down: (I) the harm done to education by Dewey and his followers in telling teachers that the child ought to study the thing it finds pleasant, which has the result of making effort seem an evil on the ground that it is unpleasant. In the result the student fails to learn the need of that organised concentration of mind which gives understanding because as soon as it is difficult it becomes unpleasant. (II) We agreed also that the main difference between people lies in the capacity for abstraction. The weakness *e.g.* of the uneducated lies in the fact that they see all problems in terms of persons. So that a quarrel or a dislike makes them the enemy of an idea where education ought to reach that point where the personal can be transcended into an abstraction, *e.g.* I remain a Republican even though Mr. Hoover did not make me a member of the

Law Enforcement Commission; or, "I do not condemn American civilisation" (the keynote of most comment at this moment) even though I am horror-struck at the Lindbergh tragedy.¹

In the way of reading, some interesting things. McIlwain's book, which the *Harvard Law Review* sent me,² is *very* good; less I think in the earlier than in the later period. Its weakness seems to me the separation of a body of doctrine from the living world to which it belonged; and, at times, an excessive interest in minutiae to the exclusion of the big problems. Sometimes, also, I disagree with the emphasis. I should, for instance, give more space to the Counciliar movement than he on the ground that though the movement did not give birth to new ideas it gave first-rate significance to views which were of little importance when they were first put forward. I think he is very good on Fortescue, and quite unquestionably right as against Holdsworth on Hobbes. Altogether I should regard it as the most important book of its kind since Gierke, and a credit to American scholarship. Then I read a most amusing and delightful book on the Prince Consort by Bolitho — a little in the Strachey manner, but full of little sidelights which are attractive. And, for work purposes, the official biography of Sir R. Peel. I am doing an essay on him for a friend's volume on the Victorian age³ and have been quite fascinated by the casuistical question of whether Peel was justified in his action over Catholic Emancipation and the Corn Laws. The documents have convinced me that my earlier views are mistaken and that he should have resigned. But you shall see the essay in September and tell me what impression it makes upon you.

In the way of book-hunting I have not much to report. I found a pretty little collection of 17th century answers to Hobbes made by Croom Robertson the philosopher and worth the five pounds I paid for it; and a curious set of essays by Fréron, the enemy of Voltaire, in the third volume of which there is a very interesting series of essays on Montesquieu mostly by other hands one or two of which have acuteness and all of which are most revealing testimony to the amazing impact he made on his generation. And I must not forget to tell you what I regard as my pretty discovery. Among the Mazarinades there is one solitary republican tract printed at Bordeaux. I have never made out why it was solitary. All the other tracts are pro-monarch but hostile to the particular advisers of the King. Now I have found that the reason is that the tract was English propaganda. It was written in London, translated into French there, and shipped by Cromwell to Bordeaux as a means of causing trouble at the

¹ The kidnapping of the Lindbergh child had occurred in March; on May 12 the child's body had been found.

² Reviewed by Laski, 46 *Harv. L. Rev.* 345 (December 1932).

³ *The Great Victorians* (H. J. and H. Massingham, eds., 1932).

weakest point of the French chain; and as it produced no comment I assume that it was solitary because no Frenchman of the time was prepared to play with the idea of a republic.

Our love to you. If your sun is as bright as ours you will feel the beauty of things as I did yesterday when we motored to Kent and heard the nightingales among the orchards.

Ever affectionately yours, H. J. L.

Washington, D. C., May 25, '32

My dear Laski: Your letters do give me much pleasure. One today in which you say much the same things that I had been thinking about McIlwain's book — especially the end better than the beginning; excessive interest in minutiae &c. &c, but on the whole a creditable book. Sir ——— Salter's book, *Recovery*, impressed me but didn't move me to such intelligent scrutiny as it deserves. Two good books by Tomlinson about 1) the wilds of the Amazon¹ and 2) the Islands near Borneo or Sumatra.² Clive Bell, *An Account of French Painting*, a Japanese story.³ . . . I am just finishing a book on Sam Houston — (Texas) partly squalid but impressive⁴ &c. &c. I got a heavenly drive — before luncheon. A good letter from F. Frankfurter today pleasing me much by showing that Brandeis and Mrs. B. were pleased by a few words of introduction to a book about him I wrote⁵ — and speaking in a high hearted way of the effect of the hard times on our young men. I don't know why writing comes so hard to me these few last weeks — I suppose it is old age — but I can no more. . . .

Affectionately yours, O. W. Holmes

Devon Lodge, 29.V.32

My dear Justice: I was amused and pleased with your account of your strivings with Spengler. I read him when he first came out, and thought him pretentious and absurd. Of course I can't check a good deal of his learning, e.g. in the history of architecture or of mathematics. But I could not bring myself to believe that history repeats itself upon a morphological pattern and I felt that the book belonged to the category I always suspect which seeks for scientific laws in a material not susceptible to that kind of expression. As I see the historical movement, decline and

¹ H. M. Tomlinson, *The Sea and the Jungle* (1923).

² *Tide Marks* (1924).

³ Lady Murasaki, *The Tale of Genji* (Waley, tr., 1925).

⁴ Marquis James, *The Raven: A Biography of Sam Houston* (1929).

⁵ *Mr. Justice Brandeis* (Frankfurter, ed., 1932). Laski reviewed the book in *72 New Republic* 50 (Aug. 24, 1932).

improvement are the products of a large number of incommensurable factors — technological changes, the birth-rate, immersion in luxury, power to postpone immediate consumption, effective control of vested interests, wisdom in government, etc. and I doubt the power to build prediction on their operation. So I simply assume that you are entitled to relief from headaches upon the simple basis that Spengler belongs to those people like Mme. Blavatsky¹ whom one assumes to be outside the realm of necessary experience.

I have had a pretty busy time lately. Some long articles to write, which cost a good deal of trouble, and a heavy load of university business. But I must say that the one definite conclusion of the latter was the futility of international congresses. We have had in London one on local government which seemed to me a ghastly waste of time.² Eminent administrators preened themselves for a week and said that the electoral system was good (or bad) that one ought to combine the merits of central control with decentralisation, that efficiency was desirable; and they ate large dinners and thanked their hosts for their hospitality. Everyone seemed to avoid the necessity for understanding one another; and all of them, including the Americans, seemed to consider that American local government was beneath the gaze of civilised men. I don't know what they got out of it not much more easily available in good books. I felt that I wasted a week of my time being amiable with no good result.

In the way of reading some interesting things have come my way. The first volume of Arnold Bennett's *Journal* is quite fascinating. He is really attractive — honest, kindly, supremely intelligent, and incapable of any of the self-humbug which is the writer's cardinal sin. Then I have been enjoying a brilliant book by W. D. Ross called *The Right and the Good*, (Oxford Press) the best book on ethics I have read in many a day. I don't agree with it, because I cannot see that there is any escape from the fact that ethical criteria are the result of social experience and that, accordingly, the things we deem right are the things which get accepted in the struggle for existence as most adapted to its necessities. But it is really most stimulating and gives one that sharp kind of mental effort which comes from testing one's theories against a really first-class mind equipped to maximise the difficulties. Then I re-read F. Pollock's *Spinoza* with unadulterated pleasure. It's not only the best of his books, but quite easily, I think, the best study of Spinoza ever written. He is an

¹ Helena Petrovna Blavatsky (1831–1891), wandering theosophist, founder of the Theosophical Society; author of *Isis Unveiled* (1877).

² The meeting was the triennial session of the International Congress of Local Authorities; see 20 *National Municipal Review* 577 (August 1932).

amazing fellow. I see from the paper this morning that he was down last night at Birmingham talking to the law students there on the "talkative profession" — and that he is to speak to a London law club next week. Not bad that for nearly ninety! The final thing worth mentioning is an old novel by George Gissing called *The Crown of Life* — a very able picture of London and its queer intermingling of classes forty years ago, with that undercurrent of sad acceptance of life as on the whole a mistake which is omnipresent in him. No! I should add H. C. Lea's *History of Sacerdotal Celibacy* which I persuaded the Rationalist Press to reprint at five shillings. There is a real masterpiece for you — solid learning on a great theme finely used in the cause of enlightenment. I wish there were more historians like Lea. Since the writing of history was mainly entrusted to the academic professionals the tendency has been to avoid the themes that might give offence; and men get a reputation for learning because they know everything possible on the medieval wardrobe or the liturgy of the ancient Nestorian Church of Ethiopia. I look back with regret at the age of the great amateurs. The longer I live the more convinced I feel that in the social sciences the typical expert misses the great themes dilation upon which really elevated the mind of his time. I forget who said that an expert is a man who knows more and more about less and less. But I believe that there is a terrible truth in those words.

We are living here through a period of grim pessimism — worse than anything I have known. The dark outlook in Germany, the black prospect in the Danubian states, the failure of America to recover, and the danger of war in the Far East raises awful questions of economic collapse. Our people are making a mess of it. They lack courage and faith in big principle and we seem to be drifting rather helplessly to disaster. No one seems to nail his colours to the mast; and if I had to find a metaphor I should say that statesmen look like nothing so much as squirrels running round a cage. Unless I gravely miss my guess the foundations are being laid of a position out of which, all over the world, there is no egress save through social conflict; and the price we may have to pay for that is hardly likely to be worth the results.

Our love to you. I hope this will find you pleasantly installed at Beverly, and with the new lift adding to your ease.

Ever affectionately yours, H. J. L.

Devon Lodge, 4.VI.32

My dear Justice: Your letter was very welcome; and I was particularly glad that you agreed with my view of McIlwain's book. Felix has just

sent me the volume on Brandeis: the little tribute you paid him must indeed have fallen pleasantly on his sight. And I think he richly deserved it.

I have been pretty busy this week. First I had to help Sankey with further arrangements about this committee on legal education which now seems pretty definitely to be near the birth. Atkin is to be chairman. I was amused to find that Holdsworth expressed the view to Sankey that no enquiry was needed, since English legal education could hardly be improved! This in the face of the fact that not more than ten per cent of the students at the Inns do any formal work for their bar exams and that more pass among those who don't than among those who do is a really interesting comment from a professor of law. Then I have been busy colloquing with the French socialists for our labour party on their line of action in this crisis.¹ It was an interesting job — not easy. They are a curiously divided lot — some admirable, some about as Chauvinistic as Roosevelt or Lodge. They seemed divided into those who would like to see Germany ruined politically and damn the economic consequences and those who realise that the world market means that a ruined Germany means in the long run a ruined France. I was amazed at the intensity of their dislike for America. Mainly of course their attitude is based upon sheer ignorance. The America they know is tourist America — rich, careless, dominating. Their knowledge is made out of a composite picture built on the stock yards, the skyscraper, Rockefeller, Capone and the Lindbergh tragedy. They know little or nothing of American literature (or any other except their own). They believe she is entirely materialistic; and an hour's speech from me on the America they did not know I can only describe as a real revelation. But it does make one feel that, with all their great qualities, the insularity of the French is something like a danger to the world. For the assessment of national motives is at bottom the thing that forms the stereotype out of which foreign policy emerges.

In the way of reading one or two pleasant voyages are worth recording. Ortega's *The Revolt of the Masses* — he is a Spaniard — without being profound is interesting and suggestive. I greatly enjoyed Sam Morison's *Builders of the Bay State* [sic] — and even felt that when I retire I could enjoy writing a book on the two Mathers — especially Cotton; and I found much profit in John Laird's *Idea of Value*. I also read a highly praised American novel 1919 by John dos Passos. Its technique I did not fully understand; and the innumerable fornications of the different characters didn't seem to me worth the space they occupied (surely fornication as such is only significant to the persons involved). But now and again I got an impression of power in the novel though I thought a

¹ On June 4 Edouard Herriot had formed a government of Radical-Socialists from which the Unified Socialists under Léon Blum were excluded.

power fettered by the man's inability to shake himself free from the conviction that he was effecting a profound revolution in the method of fiction. I also enjoyed a brief little row in the *New Republic* over the pretensions of a young Harvard group of aesthetes to be significant in American culture.² I didn't know their magazine — *The Hound and Horn* — but I found a number and suspected that they had not achieved the elementary obligation to separate conception of self from conception of Deity. Lastly I re-read for the fourteenth time the *Leviathan* and, on top of it, L. Stephen's life of him. The first supreme — one licks one's chops over the wholly unsurpassed power of phrase. And the Life is Stephen at his best — weighty, temperate, and with the unerring eye for the bit of humour that adds spice to life. I wish one could persuade the publishers to do cheap editions of his *18th Century* and *Utilitarians*. They are both out of print and both, I think, a lesson in the job to the present generation. Contrast McIlwain and Stephen and you have the real weakness of the academic mind exposed — learning for learning's sake as against learning for life's sake. I wish I had known Leslie Stephen. I have bought little mainly because I have lacked the time for search. But you will be amused, I think, to hear of a visit of mine to a bookshop where I found a certain English peer trying to knock down the price of a second folio which had once been in his family. The bookseller asked a pretty reasonable price; the peer seemed to suspect that he was doing the bookseller a favour by restoring it to its original habitat. They asked me about the price. I pointed out that a better copy couldn't be had and that a poorer one had recently brought thirty pounds more. The peer looked round, hummed and hawed, and at last noticed a finely bound set of the works of Ouida. At last with an effort he offered to buy the Shakespere if he could have the Ouida thrown in. The bookseller agreed; and the peer turned to me with immense satisfaction and said "Now I have something to read and the damned family can't get at me any longer."

I hope the journey from Washington was pleasant. Here we have not yet had summer. There are occasional gleams of sun, but it is mostly rain and grey skies.

Our love as always.

Ever affectionately yours, H. J. L.

Devon Lodge, 19.VI.32

My dear Justice: Please imagine me surrounded by vast heaps of examination-books on every side. If there is a grimmer or more wearisome task

² See 70 *New Republic* 278 (April 20, 1932); 71 *id.* 48-49 (May 25, 1932). The antagonists in the controversy were Mr. Granville Hicks and the editors of *The Hound and Horn*, Bernard Bandler, II, Lincoln Kirstein, and A. Hyatt Mayor.

I do not know it; and it leaves one deprived of mind. Now and again a great moment of relief comes, as when a candidate makes Bolingbroke's *Patriot King* the main inspiration of James I and goes into rhapsodies over the skill with which Hobbes demolished him; or there comes a good mixed metaphor like "in admiring expediency Burke sowed a seed which was later to take wings and, with Bentham, move solidly over the straight track with its feet firmly on the ground." But I shall be glad indeed when it is all over. I was amused and pleased to find Felix quoted two or three times, and always by the better students.

I have also had to be about a good deal. The most pleasant occasion was the dinner of the Stubbs Historical Society — a student's club at Oxford — to celebrate its 700th meeting. The Bishop of Durham and I were its guests. I was almost tempted to go in for an episcopal career when I saw his violet evening dress which is the full kit of bishops. He told one great tale of Stubbs as a lecturer — a crowded hall to hear the Professor on the Reformation, and an abounding collection of Anglo-Catholic dons. Stubbs in a booming voice begins "Henry has a permanent place in English history. Henry the Great" — (an effective pause during which consternation reigns on the Catholic faces) — the Professor resumes — "Henry the Great Widower had the largest known matrimonial experience in our annals." I dined also with Sankey and was amused to hear of the struggles through which he is going in his effort to abridge the long vacation. One eminent law lord told him that now a National Government is in office he thought it would be more suitable if he (Sankey) dropped these socialistic notions. Sankey told me also of a talk with the French Ambassador to whom he expressed hopes of a successful outcome of the Lausanne Conference.¹ "I am afraid," said the Ambassador, "I notice that Mr. MacDonald is talking in metaphors before the Conference has even opened." Then I had a lunch at the House at which Austen Chamberlain enquired after you with real affection and spoke most charmingly of your affection for his sister. We discussed the position of the National Government and I asked him when he thought we could guess the beginning of its downfall. Like a flash Austen said "When they take Winston into the government." I also had a dinner here at which Tomlinson told the story of his voyage up the Amazon thirty years ago. (Have you read his *Sea and Jungle*)? We sat enthralled and almost felt the summit of exciting description had been reached until Lady Rhonddda, who was also there, told us of her adventures on the *Lusitania* when it was torpedoed.² Her most interesting

¹ The Lausanne Conference on reparations had opened on June 16. The French Ambassador in London was Aimé Fleuriat.

² David Alfred Thomas (1856-1918), first Viscount Rhonddda, statesman and financier, accompanied by his daughter (1883-), later the Viscountess

point, I thought, was that while on the boat itself, before jumping overboard, she was in agonies about her father, whether he had a life-belt etc. But once she had jumped and was in the sea nothing seemed to matter except the prospect of being saved. She was in the water 4 and $\frac{1}{2}$ hours, was picked up quite unconscious, and the action of the sea had stripped her of practically every shred of clothing. She thought the officers and crew managed very badly — boats over-crowded, not enough life-belts, no order enforced etc. But as 12 and $\frac{1}{2}$ minutes elapsed between being struck and the disappearance of the vessel her view may be *post hoc* inference. Her father told her later that in the water the one thought that obsessed him was whether he had or had not made a certain codicil in his will and that he found the notion of dying made simply irritating by this failure to be certain of whether he had given his solicitors his signed instructions.

In the way of reading one superb experience — Trotsky, *History of the Russian Revolution*, Volume I. It is really epic in character — one is swept along by its sheer dramatic force; and even when one makes all the necessary allowances for his *parti pris*, his explanation of the Bolshevik victory seems to me quite unanswerable. Then I read a *Life of Roosevelt* by one H. F. Pringle which I enjoyed. It destroys any claim on the part of T.R. to statesmanship; but he emerges from it a not unattractive figure and I was glad to see certain legends neatly punctured. I read also a queer book by Theodore Dreiser called *Tragic America* from which I gathered that only a communist revolution can save you from your threatened fate. I was reminded of Adam Smith's grand phrase "there is a great deal of ruin in a nation."

Term ends next week and I hope for a good deal more leisure in July. And as the sun really shines nowadays life offers prospects even though the economic horizon is so grim.

Our love to you as always.

Ever affectionately yours, H. J. L.

Devon Lodge, 28.VI.32

My dear Justice: Of course the supreme event of the day is Felix's nomination;¹ compared to it little things like the Presidential election pale for me into insignificance. I am more overjoyed than I can say, even though I suppose confirmation to be uncertain and that, like Brandeis sixteen years ago, he will go through a grim time. But I am so glad this

Rhondda, was returning to England from a governmental mission to the United States when the *Lusitania* was sunk.

¹ On June 22 Governor Ely had nominated Felix Frankfurter as Associate Justice of the Supreme Judicial Court of Massachusetts. In July the Governor announced that Professor Frankfurter refused to accept the nomination.

recognition has come to him; and I get peculiar pleasure from the fact that it is just fifty years since your nomination to the same court. I don't know any better way of celebrating that great anniversary. I do hope his friends will work their hardest to put the thing through.

I have had a busy time since I wrote last. At least all the examination papers are done and that nightmare is lifted off my shoulders. I had a curious dinner with (this between ourselves) the Governor of the Bank of England² who evidently wanted to sound me out on the drift of labour opinion. It was a curious experience. He is the type who sees things intuitively and finds the process of being articulate a very difficult adventure. I liked him; but I felt that he lived in a very circumscribed world, as compared, for instance, with Eugene Meyer, and that he found it very difficult to realise that what could be open to doubt was his assumptions. Then, at the School, I had to go to an address by the Bishop of Durham which I wish I could circulate to you. It was like nothing so much as a saddened protest by a believer in the Ptolemaic astronomy against the growing acceptance of the Copernican hypothesis. He ended with the remark that only a full acceptance of the doctrine of the Cross could save us in this grimly materialist age. I asked him later what he meant by the doctrine of the Cross. He said it meant (I) living the ascetic life (II) putting spiritual well-being before material comfort (III) making one's individual life an example of these truths. I suggested that the Churches had been preaching this, without visible result, for 2000 years and that its failure was surely a comment on the postulates. But he seemed to have no doubt that the world, as he put it, was turning to Christ and that agnostics like me were incapable of seeing the facts. It reminded me of Sidgwick's explanation of the principle that the greater good of the world being more important to me than my lesser good as a self-evident postulate which provoked from Bradley the remark that for him none of Sidgwick's postulates was self-evident.

I have had one great book adventure. I got a Paris catalogue in with very cheap collections of (a) the contemporary critics of Grotius and (b) the great Spanish jurists of the sixteenth century — Vasquez, Corravurias [*sic*], Suarez etc. I thought this the kind of opportunity too good to be missed so I telephoned an offer of ten pounds for the lot. They came this morning; and I had the pleasure, human nature being what it is, of showing them to the Librarian of the Middle Temple who had just ordered them for his Library by telegram. Then I picked up for nine shillings a copy of Ravenstone's *Doubts concerning the Accepted Doctrines of Political Economy* which is so rare that it has only been up once

² Montague Norman (1871–1950), later Baron Norman, was Governor of the Bank of England, 1920–1944.

for auction since 1880; I found it on a hand-barrow in Caledonian market. Altogether a really good week.

In the way of reading, some pleasant things worth recording. I put first Lewisohn's *Expression in America* (Harper) a study of literature rather *à la* Parrington which I thought quite masterly, and particularly good on the very modern period *e.g.* Sinclair Lewis, Willa Cather *et al.* In a very different realm the new edition of Althusius by Friedrich has good stuff in it, though its style has the verbose conceptualism of the German. And I thoroughly enjoyed Westermarck's *Ethical Relativity* which came nearer to the expression of my own views upon the nature of morals than any book of years. Instead of verbal felicities and dialectic you get a solid account of social experience and the way in which it issues into ethical principle. I think you would get great comfort out of this eloquent denunciation of the absolute. Then a really amusing novel may tempt you — James Laver's *Errant Nymph* — which is only a trifle but, I think, quite delightfully done.

Now, for my sins, I must go off to a government committee on the civil service — a hard thing to do in brilliant sunshine.

Our love to you, as always.

Ever affectionately yours, H. J. L.

Beverly Farms, July 10, 1932

My dear Laski: Every letter from you is a book — those from me are merely petitions for another. Life goes on very pleasantly. I delight in this place with its early associations — but most of my friends are dead. . . . John Morse is as alive as ever at 92 ½ — and took luncheon with me yesterday. I go around by Rockport once in a while and sigh for you. The place is not much changed, I think. Books, Morton *In Search of Ireland* — the Beards' *Rise of American Civilization* — good. James Truslow Adams, *The Epic of America*. I don't care much for it. Hardy's, *Dynasts*, I don't care much for it — all mitigated by Wodehouse, *passim*.

The excitement has been the nomination of Frankfurter for the Supreme Court of Massachusetts. I hear tell he is disposed to decline. I thought he couldn't after so much talk and his ensuing silence. But I believe he wrote at once and that the silence rests with the Governor. Brandeis I hear is against his taking the place — but it is a mystery to me and I await developments. I hardly know what I should advise if asked.¹

¹ Some months earlier, Holmes had written to Governor Ely expressing the warmest opinion of Professor Frankfurter's capacities. After Governor Ely's nomination was announced, vigorous opposition to the appointment was expressed by ex-Governor Fuller, who charged that Professor Frankfurter was "an open sympathizer with murderers" and expressed the fear that if the nomination were confirmed he saw "no reason why murder should not flourish here in Massachusetts"; *New York Times*, June 23, 1932, p. 23, column 2.

It is curious that the Sacco and Vanzetti business has left such deep prejudices. I dare say you know more than I about the whole matter.

You see with what difficulty I write. I hope that will not stop you. For I am as always your affectionate

O. W. Holmes

Devon Lodge, 12.VII.32

My dear Justice: I have had a fortnight of hard extra work which has prevented me from any serious correspondence. Sankey finished the draft of his Indian Constitutional Bill¹ and called me in to comment. The result was the need to write a series of memoranda on his proposals which were literally done with sweat and blood. It was all very interesting, but very grim; the more especially as I don't think the measure will satisfy Indian demands and is cluttered up with all kinds of checks and balances which seem to me to reproduce the worst features of the worst modern constitutions.

But there have been some compensations. We had Alvin Johnson² to dinner and had good talk with him on the present position of social studies in America. He interests me. It takes about an hour to stoke him up, and he is then rather like an artichoke which you have to strip leaf by leaf in order to reach the heart. But he has most sterling commonsense and is wholly without malice. Then a good dinner with Sir Maurice Amos, who leaves me breathless. In the course of two hours he moved through the canonical doctrine of marriage to the significance of the seal in contract, to the diffusionist controversy in anthropology, the danger of principle in politics, the value of the snob to a social system, why judges die from arterial sclerosis, the virtues and defects of the English nobleman with special reference to Eustace Percy, Bertrand Russell and the danger of life on the heights, and, as a final dish, why *Love's Labour Lost* is Shakespeare's most admirable comedy. He always talked with persuasive vehemence and never without knowledge. As a sheer exhibition it was quite marvellous. Then a dinner with Low³ our most famous cartoonist in which one incident is worth recording. He explained that he saw Ramsay MacDonald today as a quite different person from when he began to caricature him ten years ago. We asked why; and he proceeded to draw six pictures of J.R.M. on the menus in which he began with a dreamy idealist, continued with a man trying hard to make himself look

¹ The Government's proposed bill contemplated the inclusion of provisions providing for provincial autonomy and for the federation of Indian states and provinces.

² Alvin Saunders Johnson (1874–), economist and Director of the New School for Social Research, 1923–1945.

³ David Low (1891–), caricaturist and cartoonist for British papers, principally the *Evening Standard*.

important, and ended up with a face that had exchanged nobility for slyness, and left one with a sense of profound distrust. A Tory M.P. who was at dinner said he thought them the best biography he had seen. I wish you could have seen them, merely as a piece of draftsmanship. They were cruel in their intensity of perception; but they were simply masterly.

My mind of course dwells very much on what is going to happen to Felix. Thompson⁴ wired me that F. is now himself the difficulty and that Brandeis is against his acceptance. I think Brandeis is wholly wrong. First I don't believe any man ought to evade vital responsibility. Then it looks to me as though the nomination ought to be, as with yourself and Cardozo, the stepping stone to Washington. Indeed Brandeis made me rather angry by his attitude for exactly the same was said to him in 1916 about his own nomination by Wilson and I gather that he did not hesitate at all. It is terribly trying to be at this distance where I can't urge Felix to what seems to me the quite obvious line of duty for him to follow.

In the way of books I have little to report as I have been buried in papers. But I read with real emotion *Madame Bovary* which I had not looked at for ten years. It seemed to me quite definitely of the first order; and the perfection of the style leaves one enchanted. Then a book you once recommended to me on the history of art by T. Craven. I thought him a man of parts, with power of shrewd observation; but I thought also that he was continually sitting back to admire himself and let you know that he did so. I also reread Mommsen and though I am convinced that Bismarck rather than Caesar is the hero I do not see how, in the field of purely political history, the thing could be better done. Of course it is a manifesto; but it really isn't possible to read it without a lifting of the spirit. It is like a trumpet call.

I have bought some very nice things. First a contemporary attack on Bodin by Jean de Serres, not without merit and foreshadowing the coming of Louis XIV which is good prophecy.⁵ Then a superb folio of Covarruvias which would enchant you. It is in stamped oak boards with clasps which lock, and the whole is in perfect condition even down to the key. Finally the *De Republica* of Gregory of Toulouse, a real rarity and in admirable condition. It expresses the kind of institutional pattern which the Huguenots wanted in the period before Henry of Navarre actually got the throne.

⁴ William G. Thompson (1864-1935), Boston lawyer who had been defense counsel in the later stages of the Sacco-Vanzetti case.

⁵ The reference is probably to Jean de Serres, *Inventaire général de l'histoire de France* (1576).

There is still a fortnight before we go to the sea breezes of Cornwall. I hope you are resting as adequately as I propose to do.

Our love as always.

Ever affectionately yours, H. J. L.

Devon Lodge, 23.VII.32

My dear Justice: A grand letter from you sent my heart to the skies. You seem to be traversing wide ground. I agree in your praise of Beard; but Truslow Adams *Epic of America* seemed to me the kind of book written to secure a wide audience by a man who has not really prepared himself for the job.

I have had a terribly busy time — as always just before I get away. I have done two long and difficult industrial arbitrations in Manchester, the kind of thing in which you have to grasp complicated masses of controversial statistics and settle schedules of wages. Then I have had some long meetings with Sankey, partly over Ireland,¹ — a terrible and stupid problem — and partly over our committee on legal education which is now all ready except for the actual letters of invitation; it's a funny thought that it should have taken me three years to convince him of the need for an enquiry of this sort. Then I have been busy with examiner's meetings — always a grim job — and the hateful task of writing a 4000 word article for Alvin Johnson on liberty,² and trying to say in it what one really needs ten times the space to say adequately. However, it is nearly done; and a week today as ever is we depart to the peace of Cornwall. I am more anxious about getting away than I can remember.

I went to one dinner which is worth recounting. It was the annual feast of the law teachers and I was very interested by the speeches. They were of two kinds. One lot — very well typified by Holdsworth — went on the lines that the law teacher ought not to encourage criticism of the judiciary and its decisions in an age of scepticism, and produced the effect of a desire on his part to fall flat on his face before a law lord. The other — typified by my friend Gutteridge — argued that the essential task of the teacher of law was a critical one; that he ought to make the law schools the centre from which juristic principle is born.³ And I was struck by the fact that in this lot the names occurred over and over again — Holmes, Maitland, Pollock, Eugen Ehrlich, Demogue, and that,

¹ In June and July there was vigorous disagreement between the British government and the government of the Irish Free State, culminating in the withholding of land annuities payable to Great Britain and the retaliatory imposition of duties on Irish imports.

² *9 Encyclopedia of Social Sciences* (1933) 442.

³ See *Journal of the Society of Public Teachers of Law*, 1932, p. 67.

quite clearly, this attitude was the dividing line between the younger men and their elders. There were over 200 teachers of law there; and, Oxford and Cambridge apart, it was clear that Harvard was the ideal at which they aimed. Queer that after fifty years since Maitland delivered his inaugural address at Cambridge⁴ nothing serious should have been done to realise his quite moderate ideals.

I had to learn from the *New Republic* that Felix had declined the Mass. Supreme Court.⁵ I assume, at this distance, that he knows best. But I was a good deal disappointed, for I felt (a) that one ought not to decline that kind of post except on grounds beyond dispute and (b) that five years of that court might well prove the direct high-road to Washington when Brandeis goes, which is, of course, where I want him to be. It's an immense satisfaction to know that the opposition to him collapsed. But, as I say, at this distance I do not assume a title to judge. I only hope that he will not regret the choice he has made. Felix was made to have a big field in which to play.

I have bought some pretty things since I wrote to you last. The nicest is the 1557 folio of Sir T. More's English works which I got astonishingly cheap at auction because the title-page was missing — one of the results, I suppose, of the slump in the book-market. Then I found an interesting little volume of 1754 with half a dozen contemporary criticisms of Montesquieu in it. Two were very interesting. One argued that the good Catholic must be on his guard against M. because his evolutionary point of view was ultimately incompatible with the truths of revealed religion. The other attacked him on the ground that he had failed to see the connection between law and economic power. Both have the additional interest of treating him with enormous reverence and diffidence. It is pretty clear that no book in the 18th century made quite so weighty or so wide an impact. One ought really to find a first-class Frenchman who would give us a critical edition of the *Esprit des lois* and tell us precisely what happened to it in the first generation after it was published. The third thing I found was a run of 20 volumes of the *Année littéraire* — Fréron's journal from 1742–62. That's the review of the Catholic right, conducted unscrupulously, but with a good deal of talent and it is amusing to see how the *philosophes* simply turn the heads of their opponents grey. Voltaire, of course, is the supreme enemy. There is even a certain *tendresse* for Rousseau, especially after his letter to D'Alembert, which suggests that the abler Catholics already saw in his lifetime that his ultimate influence would be favourable to religious reaction.

You see from all this the kind of reading I have been doing. The

⁴ "Why the History of English Law is not Written," 3 *Collected Papers of Frederic William Maitland* (Fisher, ed., 1911), 488.

⁵ 71 *New Republic* 247 (July 20, 1932).

only other thing worth noting that I have read is Maine's *Popular Government* which I had not looked at since I was an undergraduate. It had all Maine's charm of style; but I thought its philosophy poor and its insights based on unstated assumptions of which he was himself unaware.

Our love to you as always.

Ever affectionately yours, H. J. L.

As from Devon Lodge, 3.VIII.32

My dear Justice: If you were with us here in Cornwall, I am not sure that you would not protest that you were back in Massachusetts. The house is on a mass of great rocks, looking out over fields on three sides to the endless sea. All around us are granite and barberry bushes so that I am not always sure that I am not at Rockport again. A mile away in the harbour, I can see the fishermen's boats with their red and brown sails; and each night the sea-mists come round the house with the moon sending a faint silver gleam through them. When it is fine, it is all a mass of blue-sky and clear grey rock; when it rains, it is a symphony in the subdued blacks and greys of Whistler. I find it enchanting. It is three miles from anywhere. There is no sound save the wind and the remorseless plashing of the waves. The views are always changing with the changing light, and they are always beautiful. Frida has never discovered so comfortable a house, even down to the admirable library, and the interesting collection of etchings by Dürer and Méryon — above all a superb print of the former's "Melancholy." For a month at any rate I shall be lapped in peace.

The programme here is very simple. I work quietly at my book from breakfast until lunch.¹ Then we go out in the car or walk until tea; then I read until supper; and then play again until bed. At present, at any rate, the book goes with a swing; I have that pleasantly uncomfortable feeling which comes when ideas crowd in upon one. And I have read a good deal. An interesting book by Joseph Barthélemy on the *Crisis of Modern Democracy* — a more simple analysis than I should make, but full of the shrewd observations of a man who has combined academic with parliamentary experience. Then I re-read Maine's *Popular Government* with greater appreciation than on any previous occasion. There is one remarkable prophecy: that the emergence of the positive state necessarily means the supersession of the legislature by the executive. Apart from Bagehot's discovery of the cabinet I do not know any other guess so happy or so significant in this period. But it is curious how the chapter on the American Constitution praises the Supreme Court for all the wrong reasons. On his principles people like McReynolds would be the guardians of the true faith; while people like you would, I fear,

¹ Presumably *Democracy in Crisis* (1933).

be anathema as capable of a dangerous elasticity of mind. Then I have re-read the *Vicar of Wakefield* and in the art of being wholly artless I must say I think it amply deserves its position as a classic. I also read a first-class detective story by John Buchan called *The Dancing Floor* which I commend highly.

Our love to you dear Justice.

Ever affectionately yours, H. J. L.

As from Devon Lodge, 11.VIII.32

My dear Justice: I expect you will hear of Graham Wallas's death.¹ He was on holiday near us here, and developed quite suddenly a fatal attack of uraemia. I shall miss him sorely. He was always full of ideas, he had humour, and sensitiveness. Above all things, he was a great teacher. All over the world there are first-rate people in the social sciences who owe their original impulse to work to him; and I don't think a man could wish for a finer epitaph. And two of his books did a big job. I don't think it is too much to say that his *Francis Place* made the rewriting of a big period in English history inescapable; and a good many books have been written since out of its suggestiveness. *Human Nature in Politics* also created a tradition; and I think it would be possible to show that people like Walter Lippmann have built their reputation out of developing its ideas. He had warm affection and admiration for you, and I don't think we ever met this last dozen years without my being minutely questioned by him on what I knew of your activities. His death is a big gap among my friends.

Otherwise, happy is the family that has no history. I watch Frida and Diana getting bronzed and refreshed in the sun. I write for four hours each day — a little book I hope you will see round Xmas-time that is quite certainly the best I have ever written.² I walk a little, and read quietly in the garden — a marvellous garden. The others go motor excursions in the car; but I find stillness my main joy. I have reread *Anna Karenina* — which is a definite masterpiece of the first order; and Leslie Stephen's *Studies of a Biographer*. This last is Stephen at his best — always moderate, which is to say always wise; always with a mind of his own, seeing things for itself; and always with the trick of putting his finger on something novel which is the hallmark of the great critic. For instance there is a review of Texte's book on Rousseau and the Origins of Literary Cosmopolitanism.³ Texte makes a great fuss of scientific tests of its origin. Stephen remarks quite drily that if Louis XIV chose by repealing the Edict of Nantes to send a hundred thousand Huguenots

¹ See Laski, 4 *New Statesman and Nation* (N.S.) 199 (Aug. 20, 1932).

² Probably *Democracy in Crisis* (1933).

³ 4 Stephen, *Studies of a Biographer* (1902), 247.

abroad, many of whom found their way to England and the Palatinate, it is not really remarkable that they should have begun to read, and therefore to praise English and German literature. There is also a paper on Trollope⁴ which is, I think, the best thing I have ever read on him, as well as the kind of essay that makes you yearn for acquaintance with the author. Stephen never, perhaps, touches the heights of Sainte-Beuve or Hazlitt, and he has none of the sudden and dazzling moments of Coleridge; but just below them he seems to me unsurpassed, and to have a loveableness about him beyond words. I really envy you friendship with him; I wish I had been born ten years earlier so as to have paid my homage in the flesh.

Well — these holiday letters are mere paralipomena — a greeting rather than an account. You know that they bring you my love.

Ever affectionately yours, H. J. L.

As from Devon Lodge, 21.VIII.32

My dear Justice: My tale begins with my journey back from town last Saturday. I sat oppose [*sic*] a clergyman who was, I should imagine, the grandson of that Rev. Mr. Stiggins about whom Sam Weller felt so strongly. When he had read his papers he tapped me on the knee and asked me in a loud voice (there were five other people in the carriage) if I had found Christ. I said that I was, I feared, exempt from religious experience. He then proceeded to deliver a sermon to me of which the outstanding points were as follows:— (1) He washed daily in the blood of the lamb. (2) The magic of the Eucharist, taken weekly, and preferably on Sunday, is that it is a complete safeguard against sin. (3) The end of the world is coming in 1966; where shall I be when the last trump sounds if I am not girded in the armour of salvation? (4) The King is a devout Christian. Yet, by the miracle of God, his grace is open equally to the least of the King's subjects. (That appeared to be myself.) (5) In far-off Abyssinia there are Christians. Are they not entitled to know [*sic*] that in England, God's chosen land, there is no man so vile as to reject his message. (6) Prayer before meals is an excellent way of resisting the temptations of the flesh. I condense a monologue which lasted from London to Exeter; and I spare you the Biblical citations with which this vast monologue was supported. But I think it exceedingly probable that these great truths have either not come your way or have not been adequately appreciated by you. I cannot help feeling that if, say between now and your return to Washington, you washed daily in the blood of the Lamb it might be of great spiritual assistance to you.

We have had Nevinson down here with us for the last few days and

⁴ 4 Stephen, *Studies of a Biographer* (1902), 168.

have had grand talks with him. His account of the siege of Ladysmith,¹ and the provision by Sir George White of dog outlets for a birthday dinner of the Chief of Staff as a quite special delicacy, was really epic. He embarked on a passionate defence of Carlyle as the least appreciated of the great Victorians. His *French Revolution* was the proof that poetic insight can always grasp the perspective of history in its essentials. He thought Emerson the greatest of American poets. Henry James was a little man with a big manner. He thought that civilisation consisted in the evasion of simplicity instead of realising that it was the discovery of the essential. You can read his novels *once* to discover whether he escapes from the labyrinth he has constructed; but you cannot read any of them twice because even when he is out of the labyrinth, he has never got back to the highroad. Bernard Shaw has made a fortune out of the discovery that a successful middle class always enjoys the sensation of being told that it is in a state of sin; that persuades it that it has had all the experiences which the ethos of the middle-class prevents it from attempting. Xenophon was the supreme embodiment of the ideals which make an English gentleman of the best type: he was a successful soldier, he appreciated letters, he was a passionate sportsman. He did all things well, but nothing so well as to suggest that he made his living by it; and like all inspired amateurs he was never quite sure at any moment that the thing he was doing was the thing he ought to be doing. The sin of a classical education is its persuasion to portentousness; Rupert Brooke has a memorial in Skyros with a Greek inscription which the peasantry there cannot read because it is in ancient Greek and the traveller because he no longer knows Greek. If it had been in English the peasant would have been equally happy and the traveller less bewildered. As it is six scholars in Cambridge have bewildered everybody for the sake of appearing learned. Goethe is the supreme figure since Shakespere because he most perfectly balanced art and nature in his teaching. Shakespere was greater because his flashes of insight had an intense profundity that Goethe never attained. The man who tries to write a biography of Shakespere is a fool; the scrap-heap cannot be made a pyramid out of its own materials. I need not say that I am selecting and abridging from a ceaseless flow. He is a grand example of the full mind which is brought to bear on the supreme literature of all ages. And to hear him say things like "perhaps the noblest man I have ever known was a savage chief in Portugese Africa" is really a great experience.

¹ See H. W. Nevinson, *Changes and Chances* (1923), Chapter XI. Sir George Stuart White (1835-1912) commanded the British forces in the Ladysmith siege during the Boer War and, in refusing to comply with the order of General Sir Redvers Henry Buller (1839-1908) that he surrender his forces, is credited with saving South Africa for Great Britain.

We have another week here; then London and the quick approach of the normal routine. I may not complain, for weather, work and situation have all combined to perfect peace.

Our love to you.

Ever affectionately yours, H. J. L.

Devon Lodge, 27.VIII.32

My dear Justice: I got home this afternoon from one of the best holidays I have ever spent. And it ended with an amusing day which may interest you in the telling. Frida and I motored over to lunch with Bertrand Russell some twenty miles from us. He was in great form. He began with a passionate attack on the modern physicists. Subjective idealism, as preached by Jeans and Eddington, is simply part of the technique of theological reaction. It postulates comfortable inferences and finds their truth in the applause with which they are received. No science can ever be properly understood until it is conceived in its social setting. Newton did his work in England because a man of his type could not have found a favourable environment (as the experience of Galileo showed) in France or Germany or Italy. Those who seek to hand over the control of life to scientific experts ought to remember that Laplace, Lagrange and Legendre, probably the most brilliant mathematical trio a given age has ever known, united to reject Fourier's classical papers as ridiculous when these were submitted to the French Institute. Free will is a doctrine born in part out of man's desire to be master of his fate, and in part of his eagerness to prevent God from being identified with the devil. Every age needs its Dreyfus case to persuade men to remember the limitations of human justice. The surest sign that a man is unimaginative is when he takes the idea of progress for granted. Business men's success is incredible until we remember that they have only one another to compete with. I select, of course, and abbreviate; but I hope I have said enough to show that we had a thoroughly enjoyable afternoon.

We motored back through Penzance; and the sight of a second-hand bookshop suggested a visit. The old man who kept it gave me the freedom of the place and my finds were these: (I) a volume of pamphlets for two shillings containing an uncut copy of Burke on the French Revolution. This I have already sold in London for thirty pounds. (II) a fine set of the 1679 edition of the *Year Books*, which I have always coveted, for two pounds; the binding almost as new as on the day of issue. (III) a volume of tracts about the American Revolution containing practically all the most important Tory attacks on the colonies — 3/ — (iv) a first edition of Ricardo in its original boards for seven shillings. It was a grand hunting; and I cannot quite decide whether the old man was more pleased than I at getting rid of, to him uninteresting stuff. His specialty was Cornish history; and he bewailed to me the fact that the race of

Cornish enthusiasts was not what it was when he began selling books sixty years ago. He sold a perfect *Pickwick* in the original parts for £900; but when he put in an auction a copy of the first book printed in Cornish his reserve was not even reached; as though there could be any comparison in the interest of the two books. He had himself offered the nearest university college (Exeter) to conduct a class in Cornish; but no students had presented themselves though there were (snort) classes in Greek and (double snort) Hebrew. I of course extended my warm sympathies and admired a horrible grangerised history of Cornwall he had spent ten years in making. That appeased him a little and he told me that if I came again he would show me his manuscript collection of genealogical data about the families of Penzance before 1800. We parted warm friends, he telling me that "yon stuff" I had bought would make room for some fine Cornish topography he had been compelled to keep at home for lack of space. He came out to the car as we were driving off to explain that when I came again he would show me at his house his private collection of books, quite unsurpassed, on the Scilly Isles. Can you imagine this as an accompaniment to my picking up not only the items I have listed but a couple of dozen lesser things each of which gave me quite special pleasure?

We spend a week in Manchester from next Saturday with my people; and then I go off for three days to my miners in Northumberland to lecture to them on Democratic government. Meanwhile my book goes nobly ahead; and it leaves me with the feeling that it has said some things *e.g.* on the psychological impact of egalitarianism on the relation of master and servant that are new. Anyway I am thoroughly enjoying it; which I take at least to be evidence that it might be worse.

Of books read there are two worth mentioning. I reread Hardy's *Return of the Native* which the critics say is one of his three best things and, alas, could find no genius in it. A few fine pieces of scenery, but the rest, I thought, naive and artificial. I hope this does not imply excessive sophistication on my part; but try as I could I never succeeded in the feeling I get instantly with Dickens or Thackeray or Balzac of being in and of his creatures and feeling that what happens to them really matters quite enormously to me. On the other hand I read for the first time (to my shame be it said) M. Arnold's *Friendship's Garland* and thought it a masterpiece of critical insight. No doubt the "superior" tone is irritating. But the things seen are set down with the hand of a master; and the predictions have something of the great prophet's insight about them. Not least the attack on the manner of the *Times* is as fine a piece of irony as anything since Swift.

My love to you. I hope you are as fit and brown as

Ever affectionately yours, H. J. L.

Beverly Farms, Massachusetts — September 1, 1932

My dear Laski: A succession of delightful letters — but I no longer can give them adequate answers. I simply can't write more than a few hesitating straggling words — I suppose it is old age, and the worst feature of it so far. Your last with your notice of Graham Wallas came today. You give me so much pleasure that I do hope you will continue even though it becomes more and more unilateral. Most of my reading is done by my secretary aloud to me. We have just finished the *Life of Beveridge*. What a glutton for work B. was — and altogether a pretty big fellow. I didn't realize how many things he had up his sleeve when he was talking to me. His boastfulness was innocent and ready to accept correction. The biography seems to me to be much better than a political book — *The Tragic Era* — that the same author, Claude Bowers, did before. Beveridge had sound theories about writing and lived up [to] them. He took endless trouble. His travels in Europe and interviews with most of the important people are interesting. In short I have been reliving with him for a week and absorbed and moved by it.

Felix and his wife come here to luncheon from time to time. I can't help feeling as if his declining the Mass. Supreme Judicial Court was a mistake, but he and Brandeis know better than I do.

Yesterday I went over to the Richard Curtises¹ to see the eclipse, which I did, but somehow was far less impressed than I was when my wife and I went to Norfolk, Va. to see one 30 years ago. That was my only approach to seeing people except in this house. Tomorrow I expect Mrs. Beveridge for luncheon the first time down here, the next day Greenslet² the publisher &c. Idleness suits me — with a pleasant secretary for companion. I should like to write more but I can't.

Affectionately yours always, O. W. Holmes

Devon Lodge, 10.IX.32

My dear Justice: I have had some busy days since I wrote last. First I have had a difficult 3-day industrial arbitration in which I had to establish wage-scales for some thirty classes of workers. Then, at short notice, I had to do a draft report for a government committee on which I am sitting. Then we spent 5 days with my people in Manchester, and I may whisper to you that I find the process of meeting a great crowd of

¹ Richard Cary Curtis (1894–1951), son of Holmes's old friend, Mrs. Charles P. Curtis, and brother of Charles P. Curtis, Jr.

² Ferris Greenslet (1875–); for many years he was director and editor at Houghton, Mifflin Company, and as such was a close friend and adviser of Senator Beveridge.

relatives a distinctly exhausting one. However I am back home again and almost in the way of a normal routine.

The most interesting thing in Manchester was a long talk with Alexander the philosopher. I wish you could have heard it, for I am sure that you would have been largely in sympathy. He denounced Hegel and all his followers as having led a reaction which destroyed the promising rationalism of the 18th century. He set out a theory of ethics which won my heart because it went back to Adam Smith and made the judgment of goodness the result of a sentiment of approval towards the act involved, and hence enabled the experience of society to be the largest factor in producing the attitude men take to good and bad things. I confess I can see no other approach which does not, in the end, become either theological or purely personal in character. He told me a very interesting tale about B. Russell and the British Academy. In 1920 he proposed Russell for the philosophic section. This was rejected on the ground that as Russell had just been divorced, he was not a fit person to be a member. This year he proposed him again; and though all the philosophers were unanimous that it would be a disgrace not to elect him the council, on moral and social grounds, preferred a quite second-rate Oxford don. Can you beat that? Alexander said that all the people concerned agreed that Russell was by far the most distinguished philosopher in England. But those who did not object to his divorce (1932 please note!) objected to his political views and vice-versa. I said to Alexander that on those terms if I were he I should resign from the Academy in protest; that once Russell's intellectual pre-eminence was admitted the academy disgraced itself by allowing any personal questions to enter in. But this was too heroic a gesture for him. He thought that he might bring the members round to sanity by staying inside.

In the way of reading one or two pleasant things are worth recording. First and foremost P. G. Wodehouse's new novel — *Hot Water* — which, with one exception, I solemnly affirm to be the very best he has ever written. Then I read with delight the *Life of Charles Lamb* by E. V. Lucas which had never come my way before. Nothing in the way of that period has ever given me such pleasure; and Lamb emerges from it, I think, in the proportions of a hero. I remain puzzled by his inability to "see" Shelley; but his attitude to Hazlitt is really superb, and the tales of dear old George Dyer¹ add new joy to life. I also re-read, with great profit, Whitehead's *Science and the Modern World*. The last chapter, especially, interested me, for if you compare it with some of old Brooks Adams's vaticinations it makes one respect him as a man of quite un-

¹ George Dyer (1755-1841), absent-minded poet and man of letters who would occupy no niche in the history of letters had not Lamb brought his pleasing traits and trivial talents charmingly to life.

questionable insight. Then I read Pringle's *Life of Roosevelt* which I thought had point and vigour. I make the remark, in the hope of challenging you, that of all the Presidents since the Civil War who looked important while they were in office Roosevelt now emerges as the least significant. Nothing is left of him save the fact that he appointed you to the court and the memory of a vigorous personality operating fiercely in a vacuum. I must not, by the way, forget to tell you that Alexander spoke with immense warmth of Leslie Stephen as one of the great liberating forces of his time. He said that when he was a young don at Oxford, things like the "Agnostic's Apology" seemed like beacons of light in a world which the theologians seemed to possess lock, stock and barrel, and that the generosity of his private counsel was unequalled. He added that he had vivid memories of a walk with Stephen in 1889 on which they covered twenty miles, Stephen speaking only once to explain that Morley lived at a particular house they could see which they were *not* going to visit.

I picked up one or two things in M/C. but not anything to crow about. The most interesting was a copy of Savigny's *Vocation of our Time* which had belonged to Lord Lindley. He put a note in to say that he had lent it to Lord Bramwell who returned it with the remark that he did not see why a large pamphlet should be written to prove the obvious. Of such is the kingdom of heaven.

Our love to you as always. *Ever affectionately yours, H. J. L.*

Devon Lodge, 9.X.32

My dear Justice: I am ashamed of myself for the long interval since I wrote; but I have really been terribly driven. A visit to Manchester to see my people; a visit to the miners in Northumberland; three days of industrial arbitrations; a long job in connection with the dispute between this country and Ireland;¹ and the grim toil of the beginning of term (I interviewed 168 students in a fortnight) — these are my excuses. But now that the routine is in full swing again I hope to return to my decent habits.

In the way of news I have little to record. Our politics, like yours, go from bad to worse. We ignore common sense in the pursuit of a stupid economic imperialism which denies every rational economic principle; and in matters of social constitution we are now reaping the evil fruit of our class-ridden society. It is becoming terribly true that our

¹ On October 5, Mr. de Valera participated in conferences in London with British representatives concerning outstanding issues between the two governments. Negotiations which followed between October 14 and 16 quickly broke down.

governors speak in terms which mean less and less to the multitude. I am finally convinced that a civilisation dominated by business men is incapable of statesmanship. Their habits and motives are not wide enough for the task of a democracy; and the economic world they make gets into relentless contradiction with the political. The result is that the vested interests of the one deny the established expectations of the other; and the thing moves with an almost awe-inspiring determination to catastrophe. I don't say that is for today or tomorrow; I do prophecy that the basis of common agreement is in process of disappearance. It is a tragedy; but it is a tragedy implied logically in the facts.

You, I hear from Felix, are immersed (oh wise judge!) in detective stories, with an emphasis on the need for action on every page. I recommend to you the writings of one Philip MacDonald, especially *The White Crow* and *The Rasp* which, I think, fulfil the conditions you postulate. I have been reading many things, new and old. The most interesting, I think, has been the official *Life of Asquith* which contains masses of fascinating material, especially on the war and the working of our cabinet system. The Crown emerges, as always when the documents are available, as much more significant than we like to imagine; and minor matters of interest are the petty vanity of Morley as a cabinet minister, (he liked to resign with some frequency in order to be told how necessary it was that he should stay) and the meanness of Curzon who seemed incapable of straight dealing whenever office was in question. Asquith, by the way, raises some pretty literary points. Where in Jane Austen is baseball referred to? What was Darcy's Christian name? Who first said *quem deus vult perdere*, etc? The last seems to be from the scholiast on Euripides, but you may like the amusement of finding the answers to the two former.² Then I read for the first time (to my shame!) Arnold's *Friendship's Garland* — a really great book, done with verve and humour and pungency. I very thoroughly enjoyed the *Life of Beveridge*, which Mrs. B. very kindly sent me. He seems to have been a much bigger person than I thought him, though lacking in a central energising principle, and too moved by the issues of the hour to discover a general philosophy. I thought he showed his own defect in tackling Lincoln after Marshall. Lincoln was the obvious and dramatic thing to do, but the wrong thing for him because he would merely have identified himself with Lincoln and written a defence of his own ideas. What Beveridge needed was to tackle the philosophy he disliked in the man he had attacked and to learn from it that the tragedy of politics is not the clash of right and wrong, but the clash of one right with another.

² The answers to none of the questions are given in Spender and Asquith, *Life of Lord Oxford and Asquith* (1932), though they are raised in Volume I, pp. 220-221.

I also read an amazing and moving book by a Frenchman Gustave Geffroy, *L'enfermé*, a history of the great revolutionary Blanqui. It is done with marvellous force and stirs one like a great hymn.

In the way of purchases I have found only one really pretty thing, a lovely copy of the 1606 edition of Bodin in English, with a note from the translator presenting it to Ellesmere. I bid on some nice things in Paris by proxy, but, alas, they soared beyond my pen [*sic*]. I am paying for a clever lad to do a year's graduate work at the School this year as I believe he has great powers, and that restricts my capacity in a way that is good for my soul but destructive of say twenty per cent of my pleasure in catalogues. But everyone is the better for discipline.

You, I expect, are just on the way to Washington. I hope the autumn is going to give you the beauties we have just now. We went out to Richmond the other day and the Q. Anne houses in Maids of Honour Row amid the trees which were just going red were as exquisite a picture as I have seen.

Our love as always to you both. Please keep fit and well, as the first vacation when I have sixty pounds or so to spare I shall run over to see you.

Ever affectionately yours, H. J. L.

Devon Lodge, 15.X.32

My dear Justice: Another week full of students and committees, I will not say to the point of nausea, but pretty near it. Of the latter the most interesting was the first meeting of the Lord Chancellor's Committee on Legal Education. It's clear we are going to have a hard road. The Inns of Court members take the view (a) that things are admirable as they are, quite minor adjustments apart, and (b) that we have nothing at all to learn from foreign experience. Indeed a remark of mine that we should look at the work of Harvard produced from an eminent silk the comment that the American inability to cope with crime was a sufficient comment on Harvard; I imagine that this takes its place among the best *non-sequiturs* in history. Then students have produced, as always, their glories. A girl from Smith, who proposed to write a monograph on George Savile, Lord Halifax. I suggest that she should decide whether he was not greatly influenced by La Rochefoucauld. She, being anxious to show me that she is not unaware of French possibilities, breaks in with the bright remark that she herself has always thought that he much more resembled Montaigne. I explain that there are certain rather vital differences; to which she brightly retorts "O, Professor Laski, all these Frenchmen are much of a muchness." Well did the critic say that dons bury themselves in a state of resentful coma and call it research. . . .

I went also to an amusing lunch with H. G. Wells. He and I maintained against the company that in the next generation there was going to be a great intellectual renaissance in the United States — that the present coincidence of scepticism, material difficulty, absence of overmastering tradition, faith in experimentalism, made it probable that new views and new creativeness were far more likely there than in England or Western Europe. He interested me much by his fervid praise of Dos Passos and Sinclair Lewis, and we agreed that people like Willa Cather mark the attempt of any sensitive mind in a critical period to try and find a private hole in the ground. Wells remains the most alert mind I know, quick, sensitive, eager to see the light on the horizon and its significance. He has grave faults of temper, especially his insistence that his private scheme of values is the quintessence of universal experience. But he is a mind unafraid and unwilling ever to bow the knee to the conventional mythologies which are always so comfortable to those who fear the need to think anew.

Of books much the most interesting this week has been the *Life of Asquith*. He comes out of it a very great gentleman — a type rarer in politics than we like to admit. On the evidence it is pretty clear (1) that all his instincts about the war were right and (2) that Lloyd George dethroned him because Asquith would not pander to the emotional excitements the other knew how to arouse and use. It is clear too that of his colleagues few come out well — Curzon much the worst. The latter, on the same day, wrote to Asquith that Lloyd George was a cad whom he would never support and to Lloyd-George that it was quite imperative that Asquith should go. Not quite what is meant by *noblesse oblige*! It is also obvious, I think, that Asquith did not understand, and L-G did the post-war world. I have put it by saying in a book review that Asquith wanted the wrong things in the right way, and L-G the right things in the wrong way, and I believe that is pretty much the pith of the matter.¹ I must also record a really amusing trifle, a trifle, but really brilliantly done. It is called *Public Faces* by Harold Nicholson [*sic*] and will, I think, delight you.

The other book I read — don't read it — is the *Letters of D. H. Lawrence* which in a way ought to be read since Lawrence is a cult to an important section of public opinion. What is really arresting in the book is the colossal egotism of a man who can, obviously, honestly, regard the war and the post war crisis as, above all, unpleasant interferences with his personal development. And I think that complete sense of self-sufficiency, the idea that our little poems and novels and essays are things to which the world must adjust itself as significant is one of the most

¹ The review has not been identified.

interesting deposits of post-war experience. A refusal to see that you are in the universe and must make terms with it; and a condemnation of the world because your scheme of values does not forthwith become a universal. It must be a beatific condition when you can honestly believe that your own emotions are historic events!

Our love to you as always; and don't be too disturbed by Mr. Hoover's imminent disappearance from public life. If Frank Roosevelt makes Felix Solicitor-General, I will forgive him everything!

Ever affectionately yours, H. J. L.

Devon Lodge, 30.X.32

My dear Justice: A fortnight of grim labour with one or two pleasant interludes. The most amusing, I think, was a dinner with H. G. Wells who was in great form; or perhaps I ought to say that he damned all the things I like to damn. He made a furious attack on James Joyce as, effectively, the annihilation of rationality; he went for a D. H. Lawrenceite by urging that no one has the right to make his private emotions the measure of the universe. And he and I went for a Frenchman who was anxious to explain that America was materialistic where France was the spiritual guardian of civilised values. Then I went to dinner with Slessor L. J. and had a good night of legal talk. It was amusing to find that his two other guests had just discovered the Harvard Law School and were eager to explain how much more important it was than Englishmen realised. And their views of American law were funnier than I can put into words. They had found a volume of Cardozo in the Inner Temple and evidently felt about it the same wondering admiration as you or I might feel if we ran across a copy of Descartes in the *hinterland* of Manchuria. One of them was a son of old Lord MacNaghten who is now a K.B. judge; and he was so full of distress when I propounded the view that the law of torts was expressive of a certain framework of economic conditions. When I mentioned your "inarticulate major premise," he explained to me with something like passion that he had no such premises, that he "simply applied the law, looking neither to the right nor to the left." I suggested that his mind might be slightly more complex than he knew, to which he retorted that he was a simple and honourable man and that no damned nonsense about complexity was going to obscure his motives. "I never give a decision," he said "unless I can find a case to support it." I asked him if he had ever read Maitland to which he replied that he read Pollock who was very good, especially in his book on Contract, but in his "humble submission" Maitland was not a lawyer at all, but a poet. Don't you think that is a superb way to take life?

In the way of reading, I do urgently beg you to read Carl Becker's

Heavenly City of the XVIIIth Century which Yale has just published. I thought it a superb book, especially in its final chapter. If McIlwain had known how to put all the relevant things on one plane like that in his history of political ideas he would have written one of the great books of our time. Then I read Walter Lippmann's selected editorials, which he sent me. I didn't think they stood republication very well. They lacked body, and the power to take a long view. The style is, of course, simply admirable; but they are very emphatically the work of a journalist who wants to get an immediate audience, rather than of a thinker who reflects for the few hundreds who are seeking the way to penetrate to foundations. There is a desire to please which I found myself resenting. I read also a very remarkable book by Gustave Geffroy called *L'enfermé* — a history of the French revolutionary Blanqui. With all its faults, I am inclined to put it down as the most moving biography I have ever read. The theme is of course magnificent, as must any life of an Athanasius be; but it is treated worthily and with a dramatic power that makes you bang your fist on the chair at least once on every page. If it is available in Washington its mere narrative excitement would, I think, give you great pleasure.

I haven't been able to buy anything recently as my spare funds have gone in paying for a clever lad who has lost his parents to stay on at the School and get his degree. I sent for a pretty collection of *Mazarinades* from a catalogue, but, alas, too late. One of my colleagues had a good book-adventure. He was in Northampton and bought at a local sale a mass of letters from some old firm. When he got them home he discovered that the head of it in 1819 had started a correspondence with Ricardo and that he had not only all of Ricardo's letters, but copies of those the other fellow had sent. They cast much light on some nice points in Ricardian scholarship. They had been untouched in the archives of the firm for over a hundred years. They are to be published in a new edition of Ricardo which the Royal Economic Society is undertaking.¹

Of other things, there is little to tell. The Industrial Court, two government committees, my book and academic work take up their weekly part, and it is now getting most exciting both for Frida and me to watch Diana really beginning to grow up. She has reached the stage where people like Hazlitt and Jane Austen begin to seem real persons, and I find her foraging among my books and ardent in discussion in a way that makes me leap with excitement.

Our love to you unchangeably. I hope Roosevelt is elected and that he makes Felix Solicitor General. Then I shall believe in a divinity which shapes our ends!

Ever affectionately yours, H. J. L.

¹ The first two of nine contemplated volumes of David Ricardo's *Works and Correspondence* (Sraffa, ed.) were published in 1951.

Devon Lodge, 5.XI.32

My dear Justice: I feel full of virtue as I took the typescript of my book to the publisher this week; and re-reading it before doing so, it really seemed to me very sensible. Otherwise it has been a kind of routine week in which there was nothing of decorative interest except an American psychologist who wanted to interest me in the most incredible piece of research of which I have ever heard. He has a scholarship to investigate the influence of the present on the future. For this purpose he is asking two thousand people (a) are you republican or democrat? (b) do you think Hoover will be reelected, and making a coefficient between the replies on the basis that this will tell him how much desire governs decision. I tried to point out weaknesses, but wholly in vain. Then he had another questionnaire on what he called social vanity. Would I ask my students to tell him whether (I) they had never, sometimes, often, done things they regretted and (II) did they look forward to the future with despair, neutrally or hopefully, and (III) had they last month wasted no, little, or much time. The answers, it appears, would enable him to say whether people are vain or not. I tried to dissuade him and suggested that the answers would not tell him anything at all. But, bless you, I might as well have addressed the wind. He simply assumed that I did not understand scientific sociology and departed for more fertile pastures. And I must not forget the English clergyman who came in to tell me that he is writing a book on the relations of church and state in the 17th century and would be glad if (I) I would give him a bibliography of all writers in that period unduly neglected, (II) provide a brief account of why I think they have been unduly neglected and (III) explain just what influence each had on the development of doctrine. He explained that his parochial duties did not allow him much time for original research but that Dr. Gooch has spoken so highly of my knowledge that he would accept any material I gave him without further enquiry. He, again, thought I was very ungenerous when I declined the request and said that he ought to tell me quite frankly that it was a bad day for scholarship when *savants* (his word!) declined to give the time to helping one another. God! What a world.

I have been having some interesting correspondence with Mrs. Asquith over a review I wrote of her husband's biography. She tells me one thing that is, I think, an interesting commentary on the habits of the politician. When Asquith had his final quarrel with Lloyd-George the two men to whom he gave his greatest confidence on the Tory side were Curzon and Balfour who were his most intimate friends. They were profuse up to the very last day of Asquith's government in protestations of loyalty to him, and of dislike of L-G in whom, they insisted, they had had no confidence; but twenty-four hours later they were both members

of L-G's cabinet and Curzon was especially loud in his protestations that L-G was the only possible candidate for the Premiership. The more there emerges about those days, the worse the intrigue seems to be by which L-G got the supreme place. And as a commentary on the poison of power I know little comparable, except perhaps the folly of Hoover's last few speeches, to what men were then prepared to do in order to keep their place. Mrs. Asquith says that she is now convinced that under a mask of bland indifference Balfour had a quite insatiable appetite for office, and that this was true of him down to his very last days. Blessed indeed are they who find no satisfaction in that particular kind of ambition.

I haven't read much this week as I have been busy trying to find out the limits of a search warrant. Our genial police authorities have been going into communist headquarters, taking everything they could lay their hands on, and then founding indictments on the scraps they pick up.¹ To me, perhaps wrongly, that seems exactly the kind of thing the General Warrants case was intended to prevent; and I know that your Court has been adamant against it. I fail to find any authority which entitles them to act in this way, and though the Communists are not a very friendly type, it seems to me a public obligation to assure them adequate legal treatment. So if my researches prove me to have reason on my side, I propose to give the Attorney-General something to think over in the next few days. Really it is painful that one should have to re-establish elementary constitutional propositions nearly two hundred years after they have been regarded as well settled.

My love to you. Keep well, and read *The Cask* by Freeman Crofts!
Ever affectionately yours, H. J. L.

Washington, D. C., Nov. 7, 1932

My dear Laski: In spite of all that I have written about not writing it makes me very uncomfortable to remain silent long. I am still pursuing idleness, largely in the form of murder stories, and very little serious reading of any kind. The chief recent exception, Walter Lippmann's *Interpretations* which I read with modest admiration. I don't feel excited over the approaching election—I should think that the President had little political judgment, but I should vote for him if I had a vote—vainly I presume—the indications seeming to be for Roosevelt. Brandeis gave me the idea that Felix was in the inner circle of R. advisers, but

¹ Certain aspects of the matter referred to were later dealt with in the Courts: *Elias v. Pasmore*, [1934] 2 K.B. 164. Horridge, J., in his judgment conceded broad powers of search and seizure to the police. See, further, *The Law of Public Meeting and the Right of Police Search* (prepared by a Committee of the Haldane Club; New Fabian Research Bureau Publication, No. 13; 1933).

does not believe that he would take the Solicitor-Generalship. I think it would be queer to turn down a seat on the Mass. Supreme Bench for a Solicitor-Generalship. Perhaps the perspective has changed and I am an old fogey.

In the way of murder I like what I have read of John Dickson Carr — (author of *The Lost Gallows*).

Owen Wister sent me a poem by Robinson Jeffers — *Thurso's Landing* — some marks of power in it, but I don't care for it — though the advertisements tell me that Jeffers is the greatest living American poet.

Also G. Miller (nephew) leaves for me to sample T. Dreiser: *An American Tragedy* — but I don't mean to read it.

I have seen most of the judges but I feel very remote from the business. A Chinaman called the other day — and wanted to see you when he went to London (soon). I rather liked him — but held out no more than that I would mention his name when I wrote — Mr. Liang — Yuen Liang.¹

This doesn't call on you to do anything. You see I can't write —
except to say *Ever affectionately yours, O. W. Holmes*

Devon Lodge, 12.XI.32

My dear Justice: Well! We watched the presidential election with almost the same excitement as Americans themselves. Felix, I suppose, is delighted. I have a sense of relief at Hoover's defeat; but though I greatly like Frank Roosevelt, I am not able to feel enthusiasm at his victory. I thought he fought a second-rate campaign, evasive and timid; and I am no admirer of most of the people on whose advice he is going to depend. And I don't see how a Democrat, with Bryanism and Hearstism and such-like excrescences to consider, has got much chance of being decisive or courageous. I shall watch with enormous interest; but I suspect that this is in fact a pill to cure an earthquake.¹

I have had a busy week. The most interesting thing in it was a dinner party of economists at the School — all experts of the first order. What emerged was that there was no single issue on which any three out of the twelve were prepared to adopt the same principles or causal explanations; and when they approached agreement, the kind of proposal they made would require a revolution to make it possible for the politician to implement it. I came away feeling that *expertise* is a very small item in common sense; and that statesmanship is a kind of divine intuition which

¹ Yuen-Li-Liang (1903–), law professor and diplomatist, had recently been a teaching fellow at the Harvard Law School.

¹ A comment by Laski on Roosevelt's victory was published in the *Daily Herald* and was reprinted in 343 *Living Age* 386 (January 1933).

hasn't got much relationship to *expertise*. There was not one of the twelve whom I should have wanted as a colleague in a cabinet; each could analyse, not one of them could propose. The most distinguished of them was a German who said that the British cabinet should (I) get rid of the export trades that were not paying (II) force unemployment up to five millions (III) smash the trade unions (IV) and so force wages on to a competitive basis. I said that if the Prime Minister tried to put his policy into operation he would fill all the jails in Great Britain with trade unionists and have to use the troops to prevent them being freed by indignant mobs. Did the economists think that desirable? He thought it would be lamentable. I asked if he thought a policy with such lamentable consequences was practical. He thought perhaps not. I then asked his alternative, and he said he had none. Don't you think I may be forgiven if I feel that experts need a course of training in common-sense?

Of reading I have something to tell. I have thoroughly enjoyed our Winston Churchill's *Thoughts and Adventures*. He is a most exhilarating fellow. I doubt whether he even knows what is meant by an inarticulate major premise. I suspect that, like Theodore Roosevelt, his ideas are the outcome of physical rather than mental exertion. But if there is danger, he is in it. If there is action he is at the centre. He is incapable of reflection or of second thoughts. But he is a grand fighting animal and I think you would enjoy every page of his book. Even when he describes his pleasure in painting you feel that for him the canvas is a battlefield. Then I read an admirable French book by Albert Thibaudet — *Les idées politiques françaises* — a brilliantly clever picture of the contemporary political ideology of France. He brings out very well the way in which the Church and the Monarchy have built a kind of permanent foundation for French thought from which no subsequent generation however anticlerical or republican has wholly escaped. And a remarkable book by Tawney — *Land and Education* [*sic*] in China — so vividly written that you leave it almost convinced that you know what the Chinese problem is really about. Also a work on *Liberalism in the South*² which seemed to me a little like writing a book on Snakes in Ireland. He looks at a thin little trickle, and being a Virginian, asks everybody to come and admire the turbulent mass of water that must be the Mississippi. Queer it is how writers who have nothing to say become very important to the writer of a territorial account of literature.

I have had one amusing book adventure. I went to Derby last Saturday to make a speech. Coming out of the station I found a market — a sight I can never resist. I found a bookstall in it, and on the bookstall a mass of *Mazarinades*, some of them really rare, and all of them in first class condition. I asked the price and was told I could have them for three-

² Virginius Dabney, *Liberalism in the South* (1932).

pence a piece or seven and six for the lot. So I bought the lot and got thereby a really precious addition to my library.

One more tale and I must end. A Chinaman came to me to say that he wanted to come to the School but had exhausted his funds on the journey. Could I get him some kind of scholarship? He was polished, impressive, eager. He made me feel that so profound a love of learning ought not to go unrewarded. I asked him to leave his address, and I would see what I could do. His address was the Ritz — the most expensive hotel in London!

My love to you. Keep well and read Henry Wade — *The Murder at the Duke of York's Steps*.
Ever affectionately yours, H. J. L.

Devon Lodge, 19.XI.32

My dear Justice: A grand letter from you warmed my heart. I revel in the thought of your immersion in romance of the gustier sort. Certainly I find it a tonic.

I was terribly distressed by Charlie Howland's death.¹ Of the new friends I made in America last year he was easily the outstanding. Not only sensitive and fine, but with a generosity and rectitude beyond praise. We shared many things in common — love of you and Felix and a joy in ideas. He was the kind of person whose loss makes one feel the folly of religious consolation.

My most interesting adventure this week must remain a secret between us — but it was really interesting. Some writing of mine² had been much discussed in the press and the King's secretary asked me to go and see him and have a talk on the functions of the monarchy. I did so and we walked around the problem for two hours. Charming as he was, I left him a convinced republican. He made me feel (I) that the King's power, though intangible, is immense (II) that he is the vital pivot, and almost necessarily so, in a constitutional crisis, (III) that the sources of his opinions are drawn from so narrow a circle of experience that he cannot adequately estimate the claims of novelty in matters of social constitution, (IV) that he regards his formal powers as contingently active for emergency purposes. In other words, in a big fight the Crown would almost certainly be on the Tory side, and if it assumed a constitutional form the monarchy could be precipitated with its immense

¹ Charles P. Howland (1869–1932), lawyer and man of affairs, had died November 12.

² Perhaps *The Crisis and the Constitution: 1931 and After*, *supra*, p. 1352, and "Labour and the Constitution," 4 *New Statesman and Nation* 276 (Sept. 10, 1932). The article urged that large-scale constitutional changes would have to be effected were the Labour Party to return to power committed to an effective program of socialism.

social prestige into politics. He picked my brains with skill — not least about America and Frank Roosevelt. But he didn't *know* things. What he had was, so to speak, the best gossip; and I felt that it was an inadequate basis of policy-formation that he should be so limited. I liked him greatly, and was convinced of his benevolent intentions. But he knew only one world and he did not even know that he lacked the key to the other.

Of other things, there is less to say. An amusing dinner with Bernard Shaw, at which I met J. M. Barrie. He reminded me of sugar and water dressed up to look like champagne. A curious effort to be winsome which left one feeling that he was a case of arrested intellectual development. Shaw talked well, especially about the immense effect on our times made by the decline in religious belief as one of the big factors for instability. A hundred years ago men looked to heaven for consolation for the errors of this world; now they reject heaven and this world has, somehow, to make its peace with them. He also made the interesting remark that Ibsen wrote the best stage dialogue since Molière, that he had the supreme gift of the theatre which consists in giving every actor a first-rate entrance and exit. He thought — Barrie dissenting vehemently — that Galsworthy was important as a social document rather than an artist. He understood the Englishman of decent habits and cultured mind who has a family-place, seven thousand a year, and a butler who stands by the tradition; but he can't understand why that type does not necessarily impress the English multitude, still less the foreigner. I think that a very fair picture, though I think the pre-war Galsworthy saw deeper than him of the post-war period. He has a kind of intellectual arteriosclerosis.

In the way of books I have been reading the first volume of Garvin's official biography of Joe Chamberlain. It's interesting, but far too diffuse. The main thing about Joe was that he missed the true boat on which to sail. If he had been less deflected by persons *e.g.* his dislike of Gladstone, and more clear about his ideas he might have made a great radical party in England; as it was he became the political expression of Kiplingite Imperialism, one of the cheapest and meanest brands on the market. How easily, too, by temperament he could have been the Robespierre of an English revolution. But both he and Morley liked being entertained by the eminent in society; and, like Dan Webster, once they got their feet under the appropriate mahogany, they were lost. I read too with great zest the second volume of Arnold Bennett's diaries; another instance of a potentially great artist ruined by an inferiority complex. He wanted the esteem of Society with a capital S; but he wanted it on his own terms, which required money. So he set out to write for money and wrote two great novels instead of ten and a hundred potboilers. But I

always liked him for he was genuine to the core. I must note, too, an amusing novel by Lorna Rea called *First Night* which is a very clever cinemetograph of the first night of a new play as it strikes a good random sample of those concerned from author to gallery. If it comes your way I think you would find it a pleasant accompaniment to solitaire.

And I must end with a story which pleased me. A pious Rabbi has a son who turns Christian. He laments long and mournfully, bewailing his lot so fiercely that God, who recognises his piety, appears to ask him what is the matter. "God," says the Rabbi, "All my life I have served you, and now my son, whom I love deeply, has become a Christian." "Ah," replies God, "I cannot help you. My own son, whom also I loved dearly, became a Christian too."

My love to you dear Justice. Keep well. Isn't it grand about Felix's appointment to Oxford? ³ *Ever affectionately yours, H. J. L.*

Washington, D. C., November 23, 1932

My dear Laski: If you keep a list of your charities — my name should lead all the rest.

A letter received a few days ago revives memory of cases we had on the limits of authority under search warrants. I think Butler expounded and I will try to add the name of his case if my secretary can find it. I am rather infirm for a search. *Marron v. U.S.*, 275 U.S. 192.¹ I have an impression there are others — but I have not thought of law for nearly a year.

As to the election if I had a vote it would have been for Hoover — without enthusiasm — Roosevelt when I knew him struck me as a good fellow with rather a soft edge, years ago.

Thank you for book recommendations — some of which at least I shall follow. I have read very little serious reading — (good life of J. Q. Adams by a son of Champ Clark — you wouldn't think that name could produce so good a one). But I almost have given up the effort after improvement and seek mainly amusement and repose. I hope you didn't despise my flabbiness — but I am rather flabby.

You will have heard of Lowell's resignation.² Tom Barbour called last night just after the radio had brought the news. I thought he was the

³In 1933-34 Felix Frankfurter was George Eastman Visiting Professor at Oxford University.

¹In an opinion by Butler, J., the Court unanimously held that, although general search warrants were outlawed by the Fourth Amendment, federal officers might, without a warrant, and incidentally to effecting an arrest, search the premises on which a crime was in process of commission and which were under the control of the criminal.

²As President of Harvard.

proper successor but he didn't want it—and is wrapped up in the Agassiz Museum of which he is head. I see the papers mention Charley Adams—I should suppose he would be A-1. Brandeis doesn't approve the suggestion of Felix for Attorney-General or Solicitor-General and I guess that he is right.

You see how hard I find it to write—my affection is unabated—but I can no more. *Please* keep on writing to me.³ O. W. H.

Devon Lodge, 27.XII.32

My dear Justice: You will have thought hardly of me for my silence in three weeks. But I got dragged into the India Conference by Sankey and had a grim time trying to be useful—five or six hours a day.¹ And though in one sense I learned much—particularly that politicians are a race apart—I ended believing that imperialism has a curve of its own the line of which moves quite independently of past experience. I spent days trying to drum into his obstinate head that as long as thirty thousand Indians, including Ghandi, were in jail, no one would look at the Constitution and that the part of wisdom was to grant an amnesty before it was exacted. Not a step have the Government taken; and I think so far as common sense is concerned I might have saved my breath to cool my porridge. Sankey is prodigal in assurances that he agrees with me but gets nothing done. The last quality of a politician is the courage to take risks, and it is certainly the most urgent.

My great news you may have heard by way of Felix. I have accepted an invitation from Yale to give the Storrs lectures at the Law School,² and I shall come over for about a fortnight after March 17th. I haven't got my dates here quite settled yet, but, please, assume that I shall look in upon you about the first week in April. I needn't tell you how thrilling it will be for me to see you again; that is really the point of the whole adventure. And please be very fit so that we can have the maximum of talk. It's intolerable to have to wait ten weeks for this joyful consummation. But even ten weeks must pass somehow or other.

My other news is of a five-day visit to Paris. I had a very jolly time. I had a dinner with Herriot, who had just been beaten in the Chamber and was like a school boy released from lessons;³ then a long talk with

³ This is the last letter from Holmes to Laski which has been preserved.

¹ The Third Round Table Conference had convened in November and closed on December 24.

² Laski's four lectures at Yale were on "The Economic Basis of Law"; they were not published.

³ Laski wrote of Herriot in the *Daily Herald*; the piece was reprinted in 343 *Living Age* 46 (September 1932).

my old friend Émile Meyerson, the philosopher, who pleased me much by saying that he regarded Morris Cohen as easily the best living American philosopher and on a par with all the best in Europe; an afternoon with Maxime Leroy, whom I regard as the most creative of French jurists; and a thrilling afternoon with Tseretelli,⁴ who told me the history of the November Revolution from the angle of a defeated Menshevik. I also visited the *Institut de Droit Comparé* and gave a lecture to the students on recent developments of British Constitutional Law. I found the latter quite interesting, but not, I thought, anywhere near the level of the best third-year men at Harvard. They were all annexed to the doctrine of some particular professor with whom they were working and in the discussion they didn't seem to me to do much more than regurgitate his ideas — and some of the ideas were not very bright e.g. an affirmation that the purpose of law is to reveal the order of nature which remained undefined after an hour's discussion.

Then I had a jolly time in the bookshops. I did not find any extraordinary things, but some I was very glad to have, especially a copy of the privately printed *inédits* of Montesquieu which his relatives got out for the family. There is some interesting stuff in them, though they still leave him remote and rather mysterious as a person. I found, too, a collection of contemporary pamphlets on Rousseau which were revealing and an *édition de luxe* of Blanqui's life by Geoffroy [*sic*] which I think I once remarked to you seems to me one of the half-dozen great biographies of modern times. But the hunting was even more attractive than the kill. The French bookseller is a special type — almost a *savant* in his way, and to talk with him is sheer delight. To find a man who gauges the movement of opinion in France by the books his customers buy and who is prepared to be philosophical about it is unknown to me in English experience. I also had a delightful adventure in a café. I had bought a rather rare copy of Villey's book on Montaigne and it lay on the table while I lunched in the Boulevard S. Michel. I saw the eyes of a middle-aged man on it continuously. At last he asked me if I knew that the book was "*rarissime*"? I said "yes" and enquired if he was interested in Montaigne. He then proceeded for the space of six or seven minutes to treat me to a lyric on Montaigne — his urbanity, his scepticism, his tolerance, that the "*idéal d'un gentleman, le grand idéal anglais*" was realised in him one hundred and fifty years before Sir Roger de Coverley and was in reality French in origin. I asked him his name and he said he had no reason to give it — he was a "*citoyen très ordinaire*" and would I only think of his pride in the fact that a foreigner knew the greatness of Montaigne. It was really a perfect little lyric to see this dumpy little Frenchman of

⁴ Irakly Tseretelli, Georgian leader of the Mensheviks, had been Minister of Posts and Telegraphs in the Kerensky government.

sixty or so all red with excitement about what was obviously a private passion he had few opportunities to satisfy.

Of other things, I have not much to tell. By way of reading I have mostly dwelt in the realm of technical memoranda on India, as you can imagine an arid zone. But I have read Trotsky's *History of the Russian Revolution* which even in an execrable translation is as exciting an experience as when one reads Carlyle for the first time. And Conrad's letters to E. Garnett which are a quite superb picture of a great artist's technique. And *Sam the Sudden* by P. G. Wodehouse, which I had unaccountably missed and found superb; and the volume of Walter Lippmann's editorials which I thought really beautifully written but not worth reprinting.

My love to you dear Justice. Please count the days until the end of March.

Ever affectionately yours, H. J. L.

VIII

1933-1935

My dear Justice: Your telegram for 1933 gave me enormous pleasure; and I need not tell you how warmly it is reciprocated. My mind is full of the anticipation of seeing you in about eleven weeks from now. It will be a red-letter day for me.

We came back this morning from a very pleasant week in Antwerp — mostly full of talk with artists. I saw there one thing you would, I think, have enjoyed — a very remarkable exhibition of Rops' etchings. Some were wicked; some merely unpleasantly obscene; but their power and purity of line were really amazing. I was interested, too, in a long talk with Ensor, now the leading artist in Belgium, and some say in Europe. He was particularly interesting about English art. He is absorbed by Turner and Constable whom he rates very high; for all the rest he appears not to give the Duke's two-penny damn. Of the Americans he has literal worship for Whistler and a high regard for the impressionist Sisley.¹ Sargent he regards as no more than a fashionable trickster who had learned the technique of being impressive without being profound. He was, of course, an enthusiast for the Dutchmen; but he had some interesting special views e.g. that El Greco and Goya were above Velasquez, and that after the period of da Vinci Italian art had become so conventionalised that none saw things definitively for himself. He was a gay, brilliant creature, with a hatred for art dealers which was gloriously funny. Then I had a good time hunting books in queer little shops in the market. I found nothing special except an amusing *Dictionnaire des athées* by Sylvain Maréchal, the associate of Babeuf, an interesting piece of early rationalism. By way of reading I came across a very clever novel by Somerset Maugham called *The Moon and Sixpence*, which I commend to you, if you have not read it, especially for its quite superb last chapter. I reread there *Oliver Twist* with moderate enthusiasm; of all the Dickens I know this is the one where sentimentalism gets most in the way. I tried also a number of Scott's which decorated the shelves, but except for *Redgauntlet*, I found them quite unreadable; all the magic seemed to have oozed out in tedious description and terribly stilted dialogue. I was surprised as I had expected quite different feelings in myself, but I found that the price of admission was terribly high.

One evening would have interested you. A friend of ours is Professor of Chinese at Ghent and has just published a vast book on symbolism in Chinese art. As you know sinologues do not take easily to one another's views. He showed me the first German reviews — he was a liar, an ignoramus, despicable, brutally stupid, unfit to be charged with teaching. We agreed that nothing so degraded academic life as this kind of criticism. Within ten minutes he was telling me that my colleague Yetts (who is our

¹ Alfred Sisley (1840–1899), French landscapist, who was much influenced by Monet and Renoir.

London Professor of Chinese)² was a liar, an ignoramus, etc. I pointed out that this was what the Germans were saying of him. "Ah," he said, "but I am speaking in the name of objective science." Can you beat that?

Another interesting afternoon was a visit to a village where recently the Virgin Mary is said to have appeared to five children. After investigation the Church was inclined to doubt the miracle. But the local landowner, who is also the hotel proprietor, is very pious and brought pressure to bear to prevent the scepticism from becoming too positive. The result is that in less than a month he has reaped a harvest from tourists who haunt the grotto in the evening in the hope of a further appearance. I add, as a piece of social history, that drink is sold on the steps of the Church, and that the children involved are already set apart for the religious life. Do you wonder that the atmosphere made me feel that there is much to be said for the anti-religious campaign of Soviet Russia? My friends of Antwerp all took it with bitter indignation. They said that the effort involved in fighting the church at every stage was intolerable and that in a Catholic country only drastic social surgery could deal with its poisonous results. The little I saw of this profiteering in miracles and its accompanying hysteria made me feel they may be right.

My love and warm good wishes for '33.

Ever affectionately yours, H. J. L.

Devon Lodge, 21.1.33

My dear Justice: It looks as though we shall sail on the *Majestic* on March 15; and I shall propose myself for a visit shortly after we get settled in Cambridge where we propose to stay until I have to go on to Yale. I need not tell you how excited I am by the prospect. It's more than I ever hoped to manage.

The most interesting thing I have been doing since I wrote to you last has been a series of wireless lectures on the state. I said that I would answer questions and over 700 letters have turned up on the first two. They vary from requests for lists of books to appeals, abuse, questions, personal grievances, and are a quite wonderful cross-section of the things that pass through men's minds. A man for instance writes from Edinburgh to complain that I called Hume "British" instead of "Scottish." A lady writes to tell me that justice has no connection with the state as she has just lost an action in the courts through the dishonesty of the judge. Another man asks me to defend anarchism which, he thinks, has never

² Walter Perceval Yetts (1878-), teacher of Chinese Art and Archaeology in the School of Oriental Studies, 1932-1946; author of *Symbolism in Chinese Art* (1912).

been properly defended. Another explains that I cannot possibly grasp the nature of political truth as I have not yet mentioned Nietzsche who is the only thinker of any importance since Plato. It is really fascinating to see how people define themselves in this kind of correspondence. And one gets the impression that the numbers in society who tremble on the verge of lunacy is far greater than one normally imagines. There are clearly people who, because they have read a book, think they are profound; and there are others who, because they have not read a book, think that they are profounder still. I believe that the number of men and women who are convinced that they possess the only clue to the secret of the universe is very large. One man actually wrote to say that he was surprised that I ventured to talk over the radio when I admitted that it was possible for other views to be held. Only those should speak, he wrote, who had hold of absolute truth. Isn't that superb?

In the way of reading, one or two interesting things have come my way. With reservations, I liked Wells's new novel (*The Bulpington of Blup*)¹ which has his amazing power of seeing a society in action and assessing its motivation. Then I read a quite admirable book on the physiocrats by Weulersse which, for me at least, was full of new *aperçus* and suggestions. I read also a book you will not read called *Moscow Dialogues* by one Heckcr. It was abominably written; but it was profoundly interesting in two ways. It was the first Communist book I have read which really explains why Moscow attaches such enormous importance to metaphysical principles; and it was amazing in its inability — a religious attitude — to understand that a man can intelligently hold an alternative view to communism. It was the book of a widely-read fanatic; for its temper was exactly that of an inquisitor who does not doubt your sincerity but argues with passion that your sincerity only makes your suppression the more necessary.

Of people, the most interesting was a night here with Alexander the philosopher. The old man was in great form and laid about him with a will. Apart from Dewey and Morris Cohen, he would have nothing of living Americans; and Russell and G. E. Moore were the only Englishmen he thought significant, apart from Whitehead. He cursed Bergson as an enemy to serious thinking and the ally of all schools of fashionable reaction. He surprised me somewhat by a rather narrow academic view of technique. But I shall never forget an hour when he explained just what Spinoza had meant in his life. It was like hearing a disciple tell of the master who has given him the clue to the universe. On a quite different plane, I had dinner with Arthur Henderson, our late Foreign Secretary,

¹ Reviewed by Laski, 5 *New Statesman and Nation* (N.S.) 105 (Jan. 25, 1933).

and learned much about the inner history of our crisis of last year.² He made it clear to me that my own much-criticised guess that the King was largely responsible for what occurred was amply justified; and he wholly rebutted the allegation that American officials of the Federal Reserve Bank had interfered. Some of his tales of MacDonald I must tell you when we meet; they confirm my impression that the politician is normally ruined not by the pressure of his work but by the influence of the adulation of his immediate environment. He spoke with great warmth of Stimson as direct, sincere, and really eager for the big thing; and with something like affection for Norman Davis. For John Simon he had complete contempt.³ Simon, he said, is a man with a big mind on a small point and a small mind on a big one. He made me feel pretty hopeless about the present international situation, not because he himself was hopeless but because the grounds of his own faith in improvement seemed to me so fragile. But I have rarely met a finer energy of character devoted to high ends.

I am busy trying to get a draft of lectures done for Yale; though I do not propose to write them out seriously until the long vacation. I am going to talk about the economic basis of law; and, as I hope, to talk sound commonsense of which you will approve the method but not the result.

Our love to you as always. *Ever affectionately yours, H. J. L.*
Don't omit to read F. Pollock's brilliant little paper in the January *L.Q.R.*⁴

Devon Lodge, 11.II.33

My dear Justice: I have been *hors de combat* for a fortnight with a nasty dose of influenza. Hence my silence. But I am up and about again, and resume forthwith my epistolary operations.

Bed means reading, and on that score I have nothing of which to complain. My main interest has been Henry Adams's *History* which I

² Arthur Henderson in October had resigned as Leader of the Labour Party following the action of the annual conference of the Party in adopting a resolution committing it to a program of forceful socialist legislation if it should obtain office. The "crisis" of 1932, to which Laski referred, was presumably the split in the Nationalist government which had led to the resignation, in September, of ten Ministers who refused further to continue in a government committed to the policy of governing through a ministry which had agreed to differ. See, *supra*, p. 1361. Other critical issues of the year had concerned unemployment relief and the means test, the failures of the Disarmament Conference at Geneva to which Mr. Norman Davis was Chief United States Delegate, and the termination in December of the Hoover moratorium on the payment of war debts.

³ Sir John Simon was Foreign Secretary at the time.

⁴ "The Snail in the Bottle, and Thereafter," 49 *L. Q. Rev.* 22 (January 1933).

read with enormous interest. And I must say with emphasis that I emerge from it very hostile to Hamilton who seems to me wholly alien from all that is autochthonic in the best of American traditions. I was left with the feeling that Henry Adams felt all the way through too great a sense of lofty superiority to his narrative to feel in a full sense what an epic it might have been. It's no use trying to be superior to men like Hamilton, Jefferson and Burr. To understand them you have to be in the arena with them; and Adams left me convinced that a large part of him was terror of failure. I like an historian to prove the redness of his blood; and Adams has that disdain which comes from the man who knows that his is blue but is too proud to tell you so. Then I read an amusing, though over-mannered book on Mark Hanna, by one Thomas Beer, not otherwise known to me. It was very interesting though in its half-accidental exposure of Theodore Roosevelt. I do not know if I ought to say so to you, but the more I read about him and Cabot Lodge the more definitely second-rate they seem to me to have been. Roosevelt was the Autolycus of the presidency, largely dependent on whom he met and what he sniffed in the air for the things he did. He never had a clear or coherent policy; and Cabot Lodge was always a little dog either yapping with joy at a master or yapping with temper at him. I would rather any day have the straightforward ruffian Mark Hanna was, who doesn't pretend that his game is clean, than the Roosevelts and the Lodges who play just the same game but put on white kid gloves in public. Then I must warmly recommend one of the most amusing novels and one of the cleverest I have read in years — *Mandoa! Mandoa!* by Winifred Holtby, which explains what happened when Christian civilisation was brought to a backward native state in Africa; it is a superb and unforgettable *tour de force*. I have also been reading with great interest a good deal of Montesquieu's posthumous works. They convince me that *the* book on him is still to be written. The account one could give of his sources would alone be epoch-making for the history of thought, and hardly less exciting to trace would be the history of his influence to about 1793 when I think it became merged with other influences and ceased to operate on its own account. I also read the *History of French Public Law* by Brissaud which moved me greatly, and seemed to me the best thing of its kind, apart from Maitland that I know. I also read a history of German public law by Stintzing [*sic*]¹ which was a monument of exact scholarship but heavy in the hand. Finally I must mention a *Short History of Christianity* by J. M. Robertson, which I had never come across before; it seemed to be the best critical account, especially for its brevity, I had ever come across.

¹ Presumably Roderich von Stintzing, *Geschichte der Deutschen Rechtswissenschaft* (3 vols., 1880–1910).

Of news, of course, I have but little; bed is a factor of insulation. But I must not forget to tell you that H. W. Nevinson has, at 75, made us all happy by marrying his, and our, old friend the writer, Evelyn Sharp. They have had what I may call a peripheral romance for about 30 years; and though H.W.N. and his wife led separate lives for a generation the latter would never agree to a divorce. Last October she died, and these two old darlings are now enjoying a real Indian summer of happiness that is a perfect joy to see. Nothing has given us so much pleasure in many a day. Then I must (for your private ear) tell you an amusing tale of a talk I had with an eminent colleague of the P.M.'s. It was put to me that what I wrote on the P.M. gave him much pain. I asked the eminent colleague whether he thought what I wrote unfair: no; had I said anything he would not have said granted my outlook: no. What then was the objection to my saying it? Only that the last 18 months had so convinced MacDonald that he was the Saviour of the universe as to make anything less than adulation something he could not digest when it came from his former friends. I offered to withdraw anything to which the eminent colleague took objection. His reply was "the trouble, Laski, is that I see no cause for objection to what you write. Only a feminine egotist could." So we agreed to leave it at that. But you understand why I always insist that power is poisonous!

Our love to you as always.

Ever affectionately yours, H. J. L.

Devon Lodge, 19.II.33

My dear Justice: Your brief note moved me profoundly.¹ You can't imagine how eagerly I look forward to March. It lights up the whole horizon.

The last week has been pretty full. Quite the most interesting experience was a long talk at the House of Commons with an eminent minister about America. I never quite realised before the importance of imagination. He had a debt-plan and I think he sent for me in the hope that I would give him unctuous confirmation. I had to say (I) there really is an American point of view which you had better try to understand (II) you must not think, even to yourself, that Great Britain has been called by God to act as his instrument and (III) the easier you make it for the President to command your point of view the more rational your proposals are likely to be. I assure you, with my hand on my heart, that all this came to him with the force of novelty. He saw the economic devastation of this country; he was quite unable even dimly to realise what it was like with you.

Then I went to a judge's dinner at Sankey's — an amusing show. I

¹ The letter referred to is missing.

sat next to an eminent Chancery Judge who gave forth the following great thoughts. (I) Maitland was a fellow with a pretty wit (II) all this talk about law reform only unsettles people and is bad for the Courts (III) we have the best legal system in the world, the best judges and the best advocates and (IV) he had never seen any point in looking at the legal system of other countries. I interjected sweetly that, at the moment, there were at least 3 judges on the U. S. bench better in quality than any who had sat on ours since Bowen; he looked at me with an air of complete amazement and said haughtily that he never deemed it necessary to look at U.S. decisions. So I gave him a ten minute lecture on the Supreme Court at the end of which he was a sadder, but I hope, a wiser man. Judges ought to be re-appointed after ten years only if they can prove mental growth in the preceding period!

I must add an extract from a book on currency I have been reading which might almost be a comment on the Harvard Law School: I have neither altered nor added anything: "It is obvious that long before 1931 the Pound was seriously overvalued. When, therefore, the crisis came and its foundations were examined, it was obvious that those critics were right who refused to place confidence in its stability, and fifteen months experience of its effort to live in freedom from artificial support makes it certain that drastic revision of its value will be necessary before it can hope to achieve definite equilibrium." Now could you ask a better vindication than that? I sent it on to Felix who ought to be pleased with its malicious possibilities.

In the way of reading I have not much to report. I tried to read a novel by William Faulkner who was reported to me as the major American novelist, but I failed lamentably. I enjoyed a first-class detective story by A. E. W. Mason called *The Sapphire* and a most admirable book by Gilbert Murray on Aristophanes and political parties at Athens² — a beautiful thing all the way through. In a lesser way, and perhaps too much in the Lytton Strachey manner, but still amusing and cleverly done, was a brief life of Wesley by Bonamy Dobrée. I must say that the more I see great religious leaders near at hand the more certain I am that the proclamation of religious truth is a form of egotism; and when it seems to be humility, as with Saint Francis, then I take it to be merely egotism in its most supremely subtle form.

I have bought little; but I have one book adventure that will, I hope tickle your palate. A wealthy parent whose boy, I suppose had told him of my books, told me he had a very beautiful medieval ms richly bound and that he would value my opinion on it. He had paid £76 for it and he thought of giving it to the Museum. So I went down to

² Probably his *Aristophanes and the War Party* (1919) rather than his *Aristophanes: A Study* (1933).

look at it and found that it was a 19th century facsimile, hand-illuminated, of the *Hours of Sarum* of the kind got out about thirty years ago to give to Catholic girls who were about to be confirmed. He asked me its possible value and I said that I was afraid he would be a little disappointed. He pressed me and I explained that it was about seven or eight shillings. Then I understood for the first time what the passion for money was. He was like a madman in temper, (a) at the disappointment (b) at the fact of being done by the man who sold it him (c) that he had lost the chance to impress me. I expressed my regret but he had so lost control of himself that he was like a volcano. When he quieted down I asked where he had bought it; he said at a sale in the country and it emerged that it was some fake auction where he was bidding against the auctioneer's "mug" in the belief that he was getting a grand thing for nothing.

Our love to you. Please be fit and well for the end of March.

Ever affectionately yours, H. J. L.

Devon Lodge, 4.III.33

My dear Justice: If I judge correctly the mysteries of the post, this ought to arrive just after your birthday. It brings you our love and every sort of good wish. It is thrilling to think that in about three weeks I shall be presenting them in person. I need not tell you how I am looking forward to that.

I have been terribly busy since I wrote to you last. When one has to go away, all the concerns of the world seem to fall on one's head. I have had some public lectures, some talks on the wireless, two long cases on the Industrial Court, and a heavy spate of work at the School. Somehow or other, in between, I have had to find time to get my Yale lectures done. But they almost *are* done, though I have found them a job. I must say one of the most interesting experiences in doing them has been the completeness of my discovery (you and I always agreed on that) that Pound really is second rate. First I am dismayed by the inability on his part to distinguish one idea from another, or a good authority from a bad. Then I am surprised at his inability to distinguish between description and cause. Then, I am baffled by the way in which he makes his historical account lead up to categories and then uses the categories as an explanation of the histories he has summarised. And he so often can't see things that are just under his nose. It is clear for instance that the common employment doctrine arises out of the major premises of judges in a *laissez-faire* society and is part of the mental climate of a society in which capitalism is arrogant and determined in the protection of its interests. Pound won't have this because it gives too much away to the

economic interpretation of law, which he dislikes. So he tells one cumbrously that this won't do, and puts forward instead a theory of the ideal of free contract as its explanation.¹ Could anything be more peurile? Of other things I have read, or reread, with great pleasure Mathiez's *French Revolution*, and an admirable book on the *cahiers* of 1789 by Chassin called "*La génie de la R.F.*" which is quite first-rate. Also as the Spanish Government has asked me to lecture in Madrid in June I have begun to read some Spanish history and law which is complicated but worth the price of admission. It also pleased me by showing clearly that a people always pays dearly for the acceptance of religious domination. The fear of the Lord is the end of all wisdom is what the preacher really ought to have said.

We have had one or two jaunts. We went to dinner to Bertrand Russell. . . . The most interesting thing was his vivid praise for Leibniz whom he seemed to put above nearly all philosophers except Plato. Then he spoke with great indignation of the metaphysical efforts of physicists like Jeans and Eddington which he (I think rightly) denounced as unscientific humbug and pointed out that the really first-rate people like Einstein and Max Planck had definitely separated themselves from any such pronouncements. He gave us a most amusing account of his introduction into the House of Lords where he was greeted as though a kind of minor devil had wandered in by mistake. Another interesting thing was a dinner at the Soviet Embassy.² I sat next to one of those typically English aristocrats who will dine anywhere so long as it is sure to be in the *Times* next day. She began by telling me that she had been at the Palace the night before — if the Bolsheviks had only had a good Tsar in Russia it all might have been so different. Then she said that the crisis in America was due to the fact that there were no old families to whom the people could look for guidance. I ventured a hint of doubt whereupon she said that her view was that there was too much mingling of classes in the modern world and that this gave the people the idea that their views were important. Then she confided to me that "friends in the know" had told her that a monarchical restoration in Germany was certain. She thought it very fine as it would stabilise things. I asked her why and she said, "Well, because you know there simply must be stability." Then, sighing as she gazed at the table, she thought it so terrible that the magnificent caviare we were eating was largely at the disposal in Russia of people who didn't have the hereditary palate to appreciate such delicacies. At this I laughed outright, I fear; and she said she was afraid I was one of those terribly sceptical moderns who

¹ See Pound, *Interpretations of Legal History* (1946 ed.), 109–111.

² Since November 1932, Jean Maisky had been the Soviet Ambassador in London.

did not realise that artistic taste was a function of ancient title. I asked her if she liked the Velasquez opposite — a great thing from the Hermitage. She then said she adored the Italian School. She added that the King of Spain had a fine taste — did I know that good shots were invariably first-rate judges of pictures? I said that might be a good reason for making the annual rifle champion of the army a director of the National Portrait gallery but this did not commend itself to her. Then she told the Ambassador that Lenin was a wicked man but she forgave him for his bravery; and the Ambassador gravely said he would report the fact of her forgiveness to Moscow. Later he told me that her husband had been one of the main organisers of anti-Russian propaganda in London until he had been made a guinea pig director of a company which traded with Russia and became an enthusiast who continually asked for free trips to the Caucasus “to inspect how our fellows are doing.” O God, O Montreal!

My love to you, dear Justice. Please keep very fit these next weeks.

Ever affectionately yours, H. J. L.

192 Brattle Street, Cambridge, Mass., April 3, 1933

My dear Justice: The most important thing is to say that I propose, subject to your approval, to arrive in Washington on Sunday, April 16th and to have lunch and dinner with you that day. I must, alas, leave on Monday morning for New York and home. You will tell me whether I am to stay with you: that is exactly as you (and Mary) find it convenient. I can perfectly well put up at the Powhatan.

The ten days since we landed have been absorbing. Save for a day in New York we have been constantly with Felix here, and it has been a liberal education. He is in magnificent shape, full of drive and electric energy. And there is a mature wisdom about him which, without being new, is newly refreshed. I did not know how profoundly my emotional loyalties were engaged to him until these days.

Our plans are simple. We stay here until Thursday; then Amherst where I have promised Stanley King to talk to his lads;¹ then Yale for a week where I blow off steam about the law; then to you as the climax of a month brimful of stimulus. Do I need to tell you with what joy I look forward to those hours.

My love and my homage.

Ever affectionately yours, Harold J. Laski

I insist that your young man² answer this.

¹ Stanley King, *supra*, p. 967, was President of Amherst College.

² Holmes's secretary at the time was Donald Hiss, who had graduated from the Harvard Law School in 1932.

Devon Lodge, 7.V.33

My dear Justice: I have no words to express the joy I had in those hours with you. They were the kind of thing that gives life its richest flavour, and they remain with me as the climax of a month of days as happy as any I can remember.

Indeed I have never had a time so exciting and so stimulating as this last visit. Partly, no doubt, this was due to the incredible kindness of Americans. You are certainly a generous people with an hospitality that goes beyond anything I have elsewhere known. But I found also that my ideas were enriched in a way that leaves me full of anxiety to get leisure (not, alas, until August) to work out something of what I have learned. And it was grand to find that the old friends remain so completely friends. The relation with you and Felix above all is, my home apart, about the most precious thing there is in my life. It expresses poorly what I want to say; but you will understand what lies behind it.

Since I came home ten days ago I have been plunged into a whirlpool of work. Mainly it concerns this quite terrible German situation, and the vast academic problem it has created.¹ It is so large and so tragic that the problem is to know just where one can begin. I have got my colleagues by a unanimous vote to give up five per cent of their salaries for three years to form a fund for endowing fellowships for the dismissed people; and now I am trying, with the assistance of other professors, to get all the British universities to follow the same road. It looks as though we may be successful; and if so I hope that we in England can take care of about one hundred of them. No doubt France and America will take a similar line; and it may well be, if we show energy and resolution, that we can make this German tragedy a turning-point at which men make a determined stand for intellectual freedom indifferently to the views in which it results. The letters I have from Germany are just horrible. It is as though a whole people was luxuriating in sadism. There is neither respect for persons nor for ideas. Mild liberals go out just as much as Jews and socialists. There has been nothing like it since the aftermath of the Revocation of the Edict of Nantes.

In the way of reading I have had too little time to adventure much. But I do urge you to read Gilbert Murray's *Aristophanes* which is a really beautiful book, mature and wise. I read also Whitehead's new book parts of which seemed to me remarkable.² But I think his power lies less in the continuity of argument than in sudden and sporadic intuitions, rather

¹ During April the Aryan decrees had been promulgated, ousting all Jews from their positions in the civil service, the academic world, and professional life.

² *Adventures of Ideas* (1933).

like the wisdom of the French aphorists than in consistent dialectic. I read, too, on the boat Morris Cohen's legal papers, always with respect, but without the same sense of really overpowering knowledge that I had in his other book. The attitude which emerges is fine; but I think he lacks, so to say, a metaphysic of law which enables him to see it as a system of causal relationships resulting in the power to predict. I read also his son's book³ which was very able but suffered a good deal from a certain *hubris* of expression and a formalism which made logical points take the place of substantial results.

I have had one or two pleasant moments since we got back. I went to a Fabian dinner where I had the great pleasure of attacking Bernard Shaw who had sought to be wittily cheap about the Jews in Germany. For years I had wanted to say to him in public that the right to treat great themes demanded the duty of seeking to treat them greatly and his flippancy gave me a superb opportunity. Last night we went to a dinner with Sprague, the Harvard economist, who is now the technical adviser to the Bank of England. We had grand talk about the state of the world, pretty pessimistic, I fear, but the kind of talk which gives one wide perspectives. He was terribly disturbed by the American decision to inflate and I, who am hardly less so, found myself in the unwanted role of explaining the President with vigour to his most technically equipped critic. Did I by the way say to you in Washington that my main American disappointment was Walter Lippmann? He seemed to me to have worn terribly thin, and to be pontifical and dogmatic in realms where his knowledge and insight were lacking. I mention him because last night he was described by Sprague in vitriolic terms; and as Walter is now one of the main voices of American conservatism this attack from the inner citadel of financial orthodoxy interested me profoundly.

I have hardly had time for book adventures. But I did take off one afternoon and attended the sale of J. M. Robertson's noble library where I picked up some pleasant volumes of the 18th century French free-thinkers and a noble copy of Hakewill's *Apology for God's Providence* which is interesting because it is one of the earliest statements I know in English of the idea of progress.

My love to you, dear Justice. I hope some beneficent university will ask me to adorn it again next year. Then we can continue in person what for the next months must be merely paper discussion.

Always yours affectionately, Harold J. Laski

³ Felix S. Cohen, *Ethical Systems and Legal Ideas* (1933).

Devon Lodge, 13.V.33

My dear Justice: A week of hard work, and of quite heart-rending visits from German academic exiles each with a tale of brutality beyond words. I think we are now moving rapidly towards an effective relief organisation for them, and some of the "stars" we have already managed to take care of; but it is the future of the young men that disturbs me, and it isn't easy to see one's way. Yet for the price of one second-class battleship one could assure that for many years to come.

I have seen people endlessly all week. The most interesting talk was with Stafford Cripps, the deputy-leader of the Opposition, who is an ex-Solicitor General and a great friend of mine. I was interested to find how eager he was for law reform on a much wider scale in England — especially of the hierarchy of appeals, the revision of the law of evidence, and the deliberate cheapening of the cost of litigation. And he was emphatic that of the younger lawyers many are as eager as some of us outside the profession, that the opposition comes from the Bench, which dislikes the idea of change, and the leaders of the bar who find things quite alright as they are. He told me a good story of a lawyer who asked Alverstone, C.J. if he ever read books on jurisprudence. "No," said A, "I find that commonsense is all that is necessary." The lawyer mentioned in succession Maine, Dicey, Pollock, to find that Alverstone had never read a line of any of them and thought "the literary line" was alright for the man "who couldn't make a success at the bar." He also told me that he once quoted in *Court Marbury v. Madison* to illustrate a point about the Australian Constitution and found that one noble lord had never heard of Marshall and was inclined to dislike an attempt to introduce "foreign jurists" into a respectable court.

In the way of reading I have not much to report. The most impressive book I have read has been Conrad's letters to E. Garnett — a most illuminating account of a writer's struggle for self-discovery. In contrast e.g. with Arnold Bennett's *Diary* the two men might well have lived on different planets. Then I read or reread a new book by a young colleague of mine named Brogan on America¹ — soon to be published by Harper's in New York. I hope you will have at least a look at it, for I think it is quite definitely the best book published in years on the U.S. Government, and it has wit and a style as well as considerable profundity.

I have also been buying one or two things. The most interesting has been Linguet's *Apologie pour "la théorie des lois civiles"* which is not only a devastating attack on Montesquieu, but is also, I think, as able a criticism of the Physiocrats as was done in that generation. Linguet is

¹ Laski contributed a Foreword to D. W. Brogan's *Government of the People: A Study in the American Political System* (1933).

decidedly a fellow who needs a book; I think he was the ablest French conservative mind in the eighteenth century, and there are many points at which I could see you saluting him. I found also Buret's *Misère des classes ouvrières* — a completely forgotten work but of great interest because large parts of Engel's historic *Condition of the English Working Classes in 1844* were taken from it without acknowledgment. And I found a nice copy of Sir T. More's English works, 1557 which was only one pound because the title page was missing; as, otherwise, it is normally fifteen to eighteen pounds I felt I had done rather well.

Here, as you can imagine, we feel as though we were living on the edge of a volcano. With the breakdown of Geneva,² and the madness of Hitler, there is a general atmosphere of unreason about which is a kind of cynical revival of the war-psychology. Few people even pretend to themselves that war can be avoided unless there is a rapid and widespread recovery of trade and the shadow of its coming looms over everything. There is a nervous tension in the air which gives to rumour and unreason an authority they have not had for fifteen years. It is a grim spectacle to see — like nothing so much as watching the suicide of a culture which, with all its faults, has really represented about the best that human nature has so far been able to accomplish. It seems stupid to destroy the foundations when one can with goodwill and determination reconstruct the house. But I have never realised so vividly before the grim hold that a regime has upon its votaries, and how difficult it is to persuade them that there are times in the history of the human race when it becomes a necessity to reconsider first principles intelligently. Heaven knows what is to be the outcome of it all; but I understand, for the first time with sympathy, why Candide was content to cultivate his garden.

My love to you as always. Please let me know when you move to Beverly Farms.

Ever affectionately yours, Harold J. Laski

Devon Lodge, 21.V.33

My dear Justice: The week has gone by almost before I had adequately realised it had commenced. The main thing is that we have now really made a start towards helping the dismissed German professors. Next week we issue an appeal for a national fund, signed by every figure who matters at all in English academic life; and my colleagues at the School have made a start towards giving the appeal reality by subscribing from the salaries of the staff a thousand pounds a year for three years. It's going, of course, to be a big job, as there are already over two

² Despite a British effort in March to save the faltering Disarmament Conference at Geneva no effective progress was made, and energies were distracted by Mussolini's effort to secure a four-power pact, which was concluded in June.

hundred people dismissed. But I hope all this will give a lead, and that between England and America we shall make Hitler and Co. realise that freedom of thought still remains a matter of importance if only to a significant minority.

The most interesting thing I have done this week was to go with Frida and Diana to a party given by some musical friends of theirs. If you wanted proof that this was a pluralistic world that evening certainly provided it. Of the two dozen or so people there I doubt whether there were five who knew that anything existed outside of music. All the values were musical; and one pianist after having ascertained that I played no instrument asked me with sincere bewilderment what I did with my time. I sat next to a German girl who sang really superbly. She did not know the names of Roosevelt, Trotsky, Bacon, Spinoza, Rousseau; but she could tell you the biographical details of even the most minor German musicians of the last two hundred years. I told Frida that she had given me one of the most healthy experiences I can remember. I learned why the things that make me glad or angry fail to make any serious impact outside a very narrow circle; and why governments so rarely encounter resistance even to their major stupidities. Not the least interesting moment was when I asked a quite eminent musical critic if he thought that one could detect the strains and stresses of the present time in music that is now being written. He obviously hardly knew what I was talking about and when I developed the theme he grew quite excited as though he had been put on the track of a really important discovery.

In the way of reading there are one or two things worth recording. First a novel by a man whom I take to be an American — *Hindu Heaven* by Max Wylie — which is a brilliant picture of the missionary college and its effective remoteness from anything essential in Indian life. Then an interesting book on the professions by A. M. Carr-Saunders which lacks philosophic unity but is a very interesting panorama of their history and organisation in England. It made me reflect upon a number of things that deserve investigation *e.g.* why is a great law teacher so little regarded in England and so highly regarded in America? Why is it impossible to develop a serious interest in legal philosophy in England? Is research ever likely to be creative if it is regarded as a merely professional by-product instead of being central to the profession and its organisation. Then a very interesting book on religion in France in the 17th century by Bousson, a work of great learning, which brings out most admirably how much more widespread the libertinist movement was than is generally supposed, and how largely its defeat was due to the monarchical sense of the Church as an essential instrument of order. The man has dug deep into all kinds of remote corners, and he has thrown a flood of light upon his subject in a wholly admirable way.

I have also bought some pretty things. The nicest is the big folio edition in four volumes of Dupuy's *Preuves des libertés de l'église gallicane* which is both a valuable book as scholarship and a really beautiful one. Then a very pretty edition of Savigny's *History* which has the merit of being printed in decent script and so really legible; and, lastly, a nice folio of Suarez *De Legibus* which is one more towards the collection I am trying to make of those admirable Spanish jurists of the 16th century.

Roosevelt did a great job by his appeal on disarmament.¹ Heaven alone knows what will emerge from the present mess in Europe. But at least I think the possibility of salvation has been brought closer by his action.

I am off to Geneva for a few days on Saturday to lecture to the University. Meanwhile, my love to you as always.

Ever affectionately yours, H. J. L.

Devon Lodge, 13.VI.33

My dear Justice: It was grand to have word from you. But I don't want you to feel any compulsion to write. I can go on quite happily telling you what things drift my way so long as it interests you to hear them.

I am just back from ten very good days in Geneva. I lectured there at the University, and in the intervals between lectures saw my friends. The outstanding fact there was the isolation of Germany — one felt it pervade the whole atmosphere. They were like men living under a cloud and trying vainly to act with bravado in order to show that they do not care. But I thought it interesting to notice that during the sitting of the League Council, at which German treatment of the Jewish minority in Upper Silesia was condemned, the German delegate had to relight his cigar eighteen times to keep it going. I had some pleasant book-hunts there, and had one find that pleased me much, a copy of Blanqui's *La patrie en danger* in which the old revolutionary wrote a dramatic inscription. I also found a bookseller who had Gibbon's library for sale practically intact. He had found it in some Swiss Chateau where it had lain undisturbed for nearly 150 years.

I came back to a busy time — examinations and a good deal of quiet work in the background over the World Economic Conference.¹ I went to its opening which was rather pathetic. Some kind, insignificant words from the King and a futile speech by MacDonald. Your Secretary of State has made a very good personal impression. But I felt convinced

¹ On May 16 President Roosevelt had addressed fifty-four nations, appealing for disarmament and a new nonaggression pact.

¹ The World Economic Conference met in London from June 12 to July 27. The Secretary of State, Cordell Hull (1871–), headed the American delegation.

that any great hopes from the Conference are doomed to disappointment. These big shows only succeed where the conference itself registers the result of precise and detailed preliminary work. Here, this is absent; and the field to be covered is so wide that it will, I fear, end like that of 1927 with a body of pious resolutions about which no one will do anything.

This apart, I have been busy with the dismissed German professors. After long efforts, I have persuaded our governors to take on three of them, one of whom the jurist Kantorowicz, I expect you know by name at least. It's a tragic business seeing them, especially the younger men, and telling them one after another that you fear there is no opening. Some of them seem to me so first-rate, both in mind and temper, that I cannot even begin to understand how anyone could regard them as other than an honour to their country. And the distress is widespread. I have, as you know, very little money; but I have felt that self-respect made it necessary for me to spend three hundred pounds of my own in relieving necessitous cases. Heaven only knows what the future holds for the children of these people — most of them quiet, inoffensive scholars whose only ambition was the chance to go on quietly with their own work.

You ask me about John Strachey's book — *The Struggle for Power*. My view of it is that on the critical side it is full of good things. I agree with his broad picture of the drift of civilisation. But on the positive side I disagree. I see no reason why there should necessarily be a communist victory. The breakdown seems to me more likely to result in a dark age of dictatorships without principle than in the triumph of any coherent body of principles. But that this civilisation drifts chaotically to its destruction seems to me the inescapable implication of the facts. Its contradictions cannot be resolved without an overturn of its foundations. Our business is to think out the planning of a new order. But there will be blood and tears before we attain it.

I have done a good deal of reading these days. First and foremost, I place Lauterpacht's *Function of Law in an International Community* (Oxford) one of the ablest legal books I have read in many a day. It's a little long and a little heavy, but a grand piece of work. Then a very interesting little book by Ensor called *Courts and Judges*, also an Oxford book, which is a comparative essay on the judicial systems of England, France and Germany, the kind of book I wish could be widely read by Judges. And through Felix I read Max Lowenthal's *The Investor Pays*, an exciting account of the receivership of the St. Paul R.R. in which the habits of Kuhn, Loeb emerge as the kind of thing making a communist philosophy seem intelligent and beneficent. And Lewis Einstein sent me his *Divided Loyalties*. I found its first part enchanting; after that I thought it somewhat tailed off. But it remains an admirable piece of work, admirably written.

I send this to Beverly in the belief that you must be there. I hope you will have the happiest of summers. I wish I could wander in to discuss once more the eternal verities.

Our love to you.

Ever affectionately yours, Harold J. Laski

Devon Lodge, 8.VII.33

My dear Justice: I have been rushed off my feet these last weeks so that I have hardly known where to turn. First, and most difficult, there has been a constant stream of German academic exiles, who have needed advice and money and all other sorts of aid. They are, as you can imagine, poor, bewildered people, who hardly know where they are; and merely to explain their own pathetic prospects to them without depriving them of hope is a bitterly difficult business. Then one of the blessed government committees on which I sit assigned the drafting of its report to me; I did not mind that so much as the endless time spent in discussing my draft with the members mostly on quite unimportant minutiae. Then I have had examinations and a series of committees of the Labour Party; and, as the *comble* of everything (this between ourselves) I got into the job of reconciling Litvinoff and Simon over the imprisoned engineers in Russia;¹ and though it came off really admirably it was a grim and exhausting process. I hope I am pardoned in the light of this programme.

One or two things are worth recording. A very pleasant dinner with H. G. Wells, at which, among others, was Walter Lippmann. It was curious to see him there. As an oracular monologist he was impressive; so soon as he was cross-examined *e.g.* by a great civil servant like Arthur Salter he emerged as feeble and vacillating. He did not really know; he had a body of prejudices, largely gained at second-hand, which he expresses so felicitously that only discussion reveals their very substantial weakness. Then an amusing lunch with the Webbs at which she tells Litvinoff that the reason the Russians are succeeding is because they have a religion. Litvinoff: "If you are using that word in an atheistic sense, Mrs. Webb, I think you are quite right." I also had Siegfried, the French publicist, to dinner. He is a very clever fellow. But he arrives at his conclusions by the most drastic selection of evidence I have ever seen

¹ In March, six officials of the Metropolitan-Vickers Company had been arrested in Moscow, charged with sabotage. Five of the accused had been convicted in April, two being sentenced to imprisonment and three being sentenced to deportation. Sir John Simon, throughout the episode, had led the Parliament to take stern measures of economic reprisal. In June, Maxim Litvinoff, the Soviet Foreign Minister had come to London to the Economic Conference. On July 1, after negotiations with Sir John Simon, he announced that the two imprisoned Britons would be released.

a man attempt. His theories about America, for example, are true between Iowa and Arkansas for one set of premises, and for about two square miles of New York for another set. Whatever does not accord with them is rejected as atypical and therefore useless. But he is very able and pertinacious; and then summarising what he has heard in the form of a sweeping generalisation. Only I wish I felt as certain about my own specialism as he does about other people's. One or two things he said amazed me *e.g.* that Brooks Adams was the most important American publicist since Hamilton, and that office confers less dignity of stature in U.S.A. than in any other great state. And I must not omit a visit from the Belgian socialist professor Henri de Man² who gave me a better description of Germany by comparing Hitler with Joseph Smith the Mormon than anyone I have met in these last weeks.

Books I have hardly had time to read. But I most warmly urge you to read (I) *Love on the Dole* by Walter Greenwood (Cape) which I believe with my hand on my heart to be a novel in the great tradition. (II) Daniel Mornet, *Les origines intellectuelles de la rév. française* (Colin) which really reveals the currents of opinion and organisation which made 1789 inevitable. A really creative book, full of new evidence on a hundred interesting matters. (III) Five essays by Santayana (Cambridge)³ which has a really masterly centenary lecture on Locke of which I think you would enjoy every word, and (IV) an American book by Emery Neff on Carlyle which is, I think, about the best thing I have read on that queer prophet. I have had two nice finds. One is a copy of Blanqui's *Critique sociale* in which the old revolutionary wrote a long inscription briefly amounting to a plea for setting the world on fire; and the other — how different! — a marvellous copy, nearly as new as on the day of publication, of Widdrington's answer to Bellarmine etc. on the duty of Catholics on the question of civil allegiance. I had looked for this for years; and McIlwain had never even seen a copy in a catalogue. But it turned up at an auction of some Benedictine's possession and came my way for seven shillings.

I go off to Spain next Sunday for ten days; then back to Cornwall where we shall be for the whole of August. So I hope to get a genuine rest to be fit and active for Felix's arrival in September.

My love to you. Keep well and remember me warmly to Rockport.

Ever affectionately yours, H. J. L.

² Henri de Man (1885—), sociologist and socialist, Professor of Social Psychology at Brussels University; during the Nazi occupation of Belgium he renounced socialism and supported the Nazis. After liberation he was sentenced to twenty years penal servitude.

³ *Some Terms of Thought in Modern Philosophy* (1933).

As from Devon Lodge, 6.VIII.33

My dear Justice: I came back from Spain last Monday after a fortnight there. It was a great adventure. I liked the people, and the scenery, and the atmosphere. The people were the English "gentleman" of legend — dignified, self-respecting, taking life as an exercise in leisure, and not a mean and petty thing we are to scramble through as we can. The country is superb — especially where I was in the first days at Santander with the sea about me and vast mountain ranges rising one behind the other in the background. And I liked the atmosphere. It made me understand why Don Quixote is imperishable. For scratch off just the varnish of modernity and everyone you meet has really stepped out of Cervantes. He comes to you as the supreme artist, like Shakespere, in the sense of being completely beyond the categories of time.

Of the things I saw, I think the most moving, and in some ways, even the most beautiful, were the rock-drawings in the caves at Altamira. They beggar description. They have verve and grace and astonishing vigour. It is almost impossible to imagine that they are some thirty thousand years old. And what is so remarkable is the way in which the artist has used the natural formation of the rock to get his sculptured effect of muscles and sinews; in the bison drawing this is simply superb. Then in Madrid I had a perfect feast in the Prado of Velasquez, Goya and El Greco. I have never even seen a collection which made so overpowering an effect. In some ways I am tempted to think that the supreme thing was the "Aesop" of Velasquez — the gentle resignation and melancholy wisdom linger on in one's mind like the haunting cadences of music. After these three, with their power of painting the within, the Murillos were, I thought, tame — a conventional beauty, exquisite in colour and proportion, but utterly lacking in the depth of the others. There was also a Peter Brueghel I had not seen before, *Il Trionfo de la Muorte* — which I thought a gigantic piece of work. I went also to the Escorial which interested me greatly. It was like the triumph of will over wit. A commonplace person conscious of his power forcing the architect to reproduce his vision as a whole, with, now and again, the artist's own vision breaking through in a window or a piece of tracery or the wing of a room. As to people I had a very interesting time with the Prime Minister, Azaña,¹ a fine fellow, honest, strong, and with a resonant anti-clericalism that went to my heart. I liked immensely, too, the Foreign Minister, Dos Rios, lately a professor of

¹ Manuel Azaña (1880–1940) had been Premier in the Zamora government since 1931; on September 8, 1933, he fell from office, returning, however as President in 1936. He provided ineffective leadership to the Republican government in the Franco rebellion and fled to France in 1939.

law, and widely read.² He had that kind of generous-hearted liberalism which sprang from the best of the French Revolution. It was very interesting to see the consciousness in these people of being responsible for the making anew of a great nation. Heaven only knows what chance of success they have. My own temptation is to believe that, sooner or later, they will give way to Fascism; that their special brand of liberalism will be crushed between the pressure of two extremes. At least I felt confident that there was no danger of a return of Alfonso XIII. They are done for good with that particular brand of impotent hypocrisy.

I had a jolly time in the bookshops of Madrid, especially trying to find copies, not unsuccessfully, of the Spanish XVIIth century jurists. The bookshops give one an insight into the mind of the people as it has been shaped by the monarcho-clericalism of the last few hundred years. Most of the first-rate books in the social sciences, the natural sciences and theology are translations; the Spanish things that matter are in the realms remote from possible inferences for daily life. The literature of devotion, and especially mystical devotion, is enormous; but I was told by Garcia, the best bookseller in Madrid, that the decline of its production since 1931, has been enormous. Altogether I got a vision of a civilisation which, if only economic conditions will give it a chance, might easily become generous and attractive in a way that few recent civilisations have been. There is still no urge for that kind of business efficiency which gives the machine its dominance. There is still a fine tradition of popular and local wisdom. The Spaniard still enjoys more than any other habit of leisure discussion of life in a café in which he can generalise his experience into an aphorism. It was striking, to me, at least, to be told by a waiter in Toledo that "life is only a tragedy for those who feel; if you can think it becomes a gigantic comedy" — then after a moment's reflection, "but, alas, in Spain so few people think." And a military guard in the train to Saragossa told me he was a republican because "monarchy disturbs one's hope of self-respect." Nor is there danger, through historical causes, of excessive centralisation. You will see, in fact, that I was captured by a certain magic in Spain. I wish I could pin it down on paper for you.

This is written from Cornwall where we are staying, as last year, until the beginning of September. I am doing a little work each day; but the country is so lovely, and the weather so perfect, that I succumb too often to the fatal charm of idleness.

² Fernando de los Ríos (1879–1949), formerly Professor of Law at the University of Madrid, had been Minister of Justice and Minister of Education before taking over the Foreign Office in May 1933; in the later stages of his career he was Spanish Ambassador in Washington and, finally, Professor of Political Science in the New School for Social Research.

My love to you, dear Justice. Take care of yourself.

Ever affectionately yours, H. J. L.

As from Devon Lodge, 12.VIII.33

My dear Justice: A week of perfect peace — beautiful weather, no telephone calls, and only a small discussion with a group of unemployed men at a camp to disturb me. Apart from reading and driving, I have been working slowly at a paper on Brandeis for *Harper's* — a kind of portrait of the man and his significance.¹ It has interested me a good deal to work at it, and I think the necessity of straightening out my own ideas has made me understand him better than I ever did before. The three things that emerge for me are that he is really a Jeffersonian Democrat, trying to use the power of the State to enforce an environment in which competition may be really free and equal; this I take to be an impossible task. Secondly, his method of analysis does magnificently relate law to the life of which it is the expression; third his criterion for all action is an ethical individualism. I take him to be intellectually, as to ends, a romantic anachronism, but as to methods a really significant figure in the Court. I doubt whether he would have had the influence he has exerted if there had not been your thirteen previous years there to form the channel for its reception. But, granted that, I conclude that his contribution has been that of a good and big man. A prophet, I suspect, rather than a judge; a grand player for a side in which he believes both disinterestedly and with all his might.

For the rest my main pleasure has been a vast dose of Turgenev whom I found here in large volume. Two short stories, "First Love" and "Torrents of Spring" struck me as exquisite; most of the rest in and near the remarkable level. The great qualities are complete simplicity and clarity so that the events become inevitable. After the action has really begun the story is not told by him, but happens of itself; this I take to be, in fiction, an even greater achievement than inexhaustible invention. It is particularly noticeable in *Rudin* and *On the Eve*. Then I read a good book by J. M. Robertson — *A Short History of Morals*. It is especially illuminating on the non-originality of what is called the Christian ethic and on the significance of Hume. And I read also a remarkable little book of Bertrand Russell, which I had somehow missed before, on scientific method.² It is not only beautifully written, as, indeed, everything is that he does, but the exposure of the effort of Jeans, Eddington *et al.* to represent recent physical developments as favourable to religious truth is simply masterly. I wish Bertie would always take the amount of trouble

¹ "Mr. Justice Brandeis," 168 *Harper's Magazine* 209 (January 1934).

² *The Scientific Outlook* (1931).

this book represents when he writes; then one has the sense that he really is a great intelligence.

We motored over to Penzance today and I had a couple of hours in the antiquarian bookshop there. I did not, as last year, unearth any special treasures, though I imagine that a pretty first edition of John Adams's *Defence of the American Constitution* [sic] is not without value. But this time I had an interesting talk with the bookseller. He told me of a Cornish ex-miner now a wealthy Nebraskan who buys from him all he can unearth on Cornish archaeology — an interesting development of taste. Then he told me a good story of being offered a bundle of Nelson letters by an old lady from Truro; he wanted some evidence of their authenticity and she blushing explained that she was the granddaughter of Nelson's child by Lady Hamilton. He had also bought for a song a long letter from General Burgoyne to his sister explaining that Yorktown and disaster loomed ahead. It was bought for a thousand dollars by a visiting American who wrote in despair a week later to say he had mislaid it. He also had for sale a grand copy of Burke on the French Revolution given by Burke to Pitt with his most obliged and humble compliments. He wanted forty-five pounds for it which was, I think, reasonable as these things go. In the way of the curious, I was tempted, but refrained, to purchase fifty volumes of anti-popery tracts collected by a clergyman who died in 1704. He had grouped them in sections: The Crime of Rome; The Sin of the Mass; The Error of Celibacy and so on. At a shilling a volume they were cheap; and really they might have made the theme of a very amusing essay. I liked the man's conviction that business conditions were improving because the last mail had brought him orders from Boston and Cincinnati.

But I begin to ramble. I send you my love and the news that Diana next October begins life at the School of Economics. Imagine that!

Ever affectionately yours, H. J. L.

As from Devon Lodge, 19.VIII.33

My dear Justice: The days roll by here in perfect peace. The weather remains cloudless sunshine, and with a little work, some books, and companionship, if it were not for the quite damnable world outside, I could ask for no more from life.

The first thing to chronicle is a book. Years ago there seems to have been an American professor named Henry Baird who wrote a history of the Huguenots.¹ I hit upon the last two volumes here, dealing with the

¹ Henry Martyn Baird (1832–1906), Professor of Greek at New York University, author of *History of the Rise of the Huguenots* (1879), *The Huguenots and Henry of Navarre* (1886), and *The Huguenots and the Revocation of the Edict of Nantes* (1895).

Revocation of the Edict of Nantes. It is turgid, rather long-winded, and with a good deal of that copious morality which is invariably irritating. But, heavens and earth, whoever Baird was, he knows how to tell a story and I wonder (I) whether I should be ashamed of myself for previous ignorance of him or (II) whether he is one of those fellows who, good as he was, just missed getting on the main line of reputation. He left me with certain profound convictions which I venture to detail to you: (I) It is impossible to make peace with the Roman Catholic Church. It is one of the permanent enemies of all that is decent in the human spirit. (II) When an enthusiasm becomes a vested interest, it also is hostile to all that matters in civilisation. (III) Toleration among men has never been born of a positive love of liberty but always of a growing indifference to the idea which was previously safeguarded by intolerance. (IV) The most usual ground of that indifference is not the decay of the religion itself but its association with other causes which contradict the needs of a new time *e.g.* the Roman Church in 18th century France plumped for absolute monarchy, feudal privilege etc. and the hatred of these things rather than a desire to tolerate led to a recognition of the Protestant claim to liberty. There are some magnificent episodes in the book — not least that of the revolt of the Camisards² which I had never read (more shame to me) in detail before. Those fellows knew how to die; and I respect anyone who can go to the wheel singing the hymns of Clément Marot.³

And that leads me to the enclosed.⁴ I was alone here the other afternoon when a young man of 23 or so left it. I looked at it and called him back. He was a pretty little creature who asked me at once if I was saved. I asked him what being "saved" meant. That led to talk during which I discovered that he himself had never heard of (I) Galileo (II) Darwin (III) Socrates, that he thought Einstein was a German Bolshevik, and scientists generally an infidel conspiracy against the truth. So I weighed in with a kind of sermon to him (a) on his ignorance and (b) on the insolence of his certitude in that ignorance. Do you think I moved him? He upped and turned on me and told me I was a messenger of the Devil sent to turn him from the ways of the Lord. And in my own drawing room he went down on his knees and asked for protection against the wiles of Satan (that was I!). I congratulated him on his direct familiarity with God and gave him a cup of tea which he refused on the ground that

² The enthusiastic, not to say fanatic Protestants of the Cévennes who in the opening years of the eighteenth century waged persistent and for a time effective war in order to compel the restoration of the Edict of Nantes.

³ Clément Marot (1496–1544), vernacular poet whose popular translations of the Psalms aided the Reformation in France and led to his condemnation by the Sorbonne and his exile from France.

⁴ The enclosure is missing.

he could not "break bread with an unbeliever." There, my dear Justice, is a measure of the thin little crust of civilisation in this world of ours. I don't object to ignorance; but when it makes a virtue of itself it is really a poor compliment to that supposed instinct of curiosity that has led us out of the woods of barbarism.

A very different experience was a visit from a soldier — a fellow on the staff of the Air Force — whom you would have loved. First of all, he was keen on his job and I liked him for that. Secondly, he hated war. Thirdly he had a hobby — Celtic archaeology — and he turned up here because there is a cromlech at the bottom of the garden and he was on a Cornwall walking tour which included the need to visit it. I got him talking over a cup of tea and he was enchanting. He spoke of people like Arthur Evans⁵ as I should speak of Maitland or Gibbon. His one idea was his retirement ten years from now when instead of reading the books of other people and verifying their results he could get down to original work of his own. Incidentally I discovered that he had the Victoria Cross for bringing down a Zeppelin during the war. I wish you could have seen him for he really did my heart good.

The only other thing I have read that is worth reporting is a book by H. Levy called *The Universe of Science*. I think the Century people publish it on your side and I do conjure you to read it — it's by far the best discussion I know of what science really means; and it is superb to see how effectively it gives the *coup de grace* to the religiosity of people like Jeans and Eddington. Do let me add that it's joy to come across a scientist who knows some history and realises that the function of science is as conditioned by the social environment as any other form of human effort.

We are down here until next Thursday when we motor back to London via Winchester and Salisbury. I am hoping for some book adventures there.

Our united love to you.

Ever affectionately yours, H. J. L.

Devon Lodge, 9.IX.33

My dear Justice: I have been back here not quite a fortnight, though with an intermission in Clay Cross, helping Arthur Henderson with his bye-election, and one in Manchester to see my people. I have been pretty busy, mainly getting a long article done for a joint book with some friends (I hope to send it to you next month) on the prevention of war,¹ and in helping these poor devils of German professors who are now more numer-

⁵ Sir Arthur Evans (1851–1941), archaeologist, whose greatest achievements were in Crete.

¹ *The Intelligent Man's Way to Prevent War* (L. Woolf, ed., 1933).

ous and more tragic than ever. (Just as I write comes a telephone message to say that the historian Mendelssohn-Bartholdy² has been dismissed). It is a terribly grim world, in which, so far as Europe is concerned, I fear that Benesh is right in saying that war or revolution are the alternatives. The British government is completely supine. We can't even get them to raise the question of the treatment of the Jews at the League; MacDonald simply argues that it is a domestic German problem in which he has no right to interfere. Yet a generation ago, I do not doubt that Europe would have made the same magnificent protest they did against the Russian progroms. Now we seem to regard it as something it is unnecessary to concern ourselves with. I wish I could tell you of the intensity of persecution there — torture, suicide to escape torture, murder; and yet the world is content to look on as though this may be regarded as part of the life of a civilised community.

In the way of reading there are one or two things worth signalling. I expect you have seen the new Wodehouse — *Heavy Weather* — which I thought good but not quite up to his very best. I also read to review the first volume of Lloyd-George's *War Memoirs*.³ It makes three very interesting points. The first is a grim attack on Lord Grey's inadequacy as Foreign Secretary; this, I think, is justified by the documents and shows how little sincerity alone is valuable in politics. Second, he is emphatic that the main Anglo-French negotiations were concealed from the cabinet until 1912, but it does not seem to occur to him that the failure of cabinet discussion on these matters is one in which he has to share the blame. Third, he is very illuminating on the War Office and its habits. It comes out clearly that the soldiers had little idea of the scale of the war they were to fight, or its probable intensity; and so far as the old problem of soldier and civilian are concerned it reinforces one's sense that the incompatibility of temper between them is really a final thing. Then I read a very amusing book on the Foreign Office by Sir John Tilley — anecdote rather than a history, but still with a tang of its own. Otherwise I have been mostly rereading old favourites like Trollope whose *Phineas Finn* comes out superbly on re-acquaintance. In Manchester I had a very pleasant evening with Alexander the philosopher. He pleased me by speaking with great warmth of Morris Cohen, and by sharing my own feeling that the price of admission to John Dewey was very high. He said that he had re-read the English tradition this last year beginning with Hobbes and emerged with a sense that Hume was incomparable both for force and subtlety. He also told me a good story of a young man who

² Albrecht Mendelssohn-Bartholdy (1874–1936), historian of modern Germany, in 1933 was awarded a lectureship at Balliol College, Oxford; author of *The War and German Society: The Testimony of a Liberal* (1937).

³ Laski's review has not been located.

wrote to him asking for a reading list on logic. He sent one; there came back a letter asking for comments on each book. Alexander replied that he could not really undertake to do that. The young man thereon wrote notes himself, asked Alexander for his opinion, and on hearing some quasi-approval published the comment with a headline to the effect that this was Alexander's recommendation to students. Alexander complained and the young man wrote back that he "ought to be thanked for the publicity he had given a philosopher in retirement."

I have bought one or two pleasant things — the nicest being a bound collection of Widdrington's pamphlets which, with what I had, makes my lot almost complete and offers the additional comfort that it would make McIlwain green with envy. I also found a very nice little collection of comments on Montesquieu which a man named Legendre had got together in 1800 or so. It's curious that he writes in the first volume "*sauf Mably le premier de nos penseurs politiques*." Curious how influential Mably was — not less in America than in France — and with nothing real to say.

Our love to you as always. It is very pleasant to be home.

Ever affectionately yours, H. J. L.

Devon Lodge, 24.IX.33

My dear Justice: I imagine that you are beginning to think of the trek back to Washington; and I am contemplating with regret the thought that in a fortnight my vacation ends. The one bright spot is the fact that Felix sails today. You can imagine with what exhilaration I look forward to his coming.

It has been a crowded fortnight. The most interesting experience was a lunch at which H. G. Wells spoke on Intolerance — one of the ablest pleas for free discussion I have ever heard. I had very good talk there with Lord Horder,¹ who is not only our best general physician, but also MacDonald's specialist and an old friend of the P.M. He told me that twenty years ago he told MacDonald he had a superb constitution and that all his illnesses were a defence-mechanism to escape from some decision he wanted to avoid. He said that MacDonald's health is an almost exact function of the state of politics; he can be made ill whenever a difficulty occurs that he doesn't want to meet by sheer auto-suggestion, and no amount of persuasion is then effective. I also spoke at a vast protest meeting for the victims of Hitlerism. I wish you could have seen it. The thing that impressed and depressed me there was the sense that all over the world we are building parties who have not only ideas but

¹ Thomas Jeeves Horder (1871–), Baron Horder; distinguished physician to kings and statesmen.

ideas stirred into action by the grimmest of all passions — hate and revenge. To sit next to a German woman whose husband, a trade-union official, was literally beaten into pulp in front of her eyes was to realise the kind of future Germany is preparing for itself when Hitlerism breaks down. Last night I took the chair at a centenary celebration of Bradlaugh — a very interesting occasion. But the most interesting thing was the history of the effort to have a ten-minute speech on the radio about him. After three months of negotiation the B.B.C. agreed that he should be mentioned on condition (I) that they chose the speaker (II) that his work for birth-control should not be mentioned (III) that he should be called a “freethinker” and not an atheist. Their original proposal, which the committee of course refused, was that they should discuss him only in relation to his fight for admission to the House of Commons. It is an interesting reflection on the power of organised religion that it should be able to get a religious service broadcast every day and three times on Sunday, and that when a really big person like Bradlaugh is to be commemorated its pressure should be sufficient to make the soft-pedal essential even to the mention of his name.

This reminds me that I have been reading with great interest a book by J. F. Hecker called *Religions and Communism* in Russia. This persuades me very convincingly that nowadays the main root of religious power is property and that once this basis goes, the power of the Church goes also with a bang. Aulard showed this was true of the French Revolution; and a very interesting book by an American named Bakke on the unemployed has just been published in which the author, whom I should judge to be a mild Liberal, says that organised religion in England, the Catholics apart, has no influence whatever on the lives of the working-class who regard it as simply an instrument intended to promote acquiescence in an established order. While I am on books I want warmly to recommend to you a book of short stories called *Ah Sex* [*sic*] by Somerset Maugham.² The first is no good, but the others, and especially the last, are not, I think, unworthy of Guy de Maupassant. I read also a first-rate short book by my young legal colleague Jennings called *The Law and the Constitution* which is a very effective criticism of the general approach to constitutional law of Dicey, done with learning, realistic commonsense and insight.

Books to buy I have not seen lately, at least at reasonable prices. I did see a grand copy of the Ellis and Spedding edition of Bacon, which I coveted, but the bookseller did not realise that this is a period of economic crisis and spurned my offer. However, tomorrow I go to Oxford (actually to discuss with Lady Margaret Hall the prospect of Diana going

² *Ah King* (1933).

there next year³ — imagine that!) and I hope to be more fortunate than I have been for some time.

My love to you as always.

Ever affectionately yours, H. J. L.

Devon Lodge, 10.X.33

My dear Justice: My main news is to tell you that we have seen Felix at Oxford, and he seems happy and comfortable there. He has a house like a small palace, all complete with servants, and from what I gathered his reception has been particularly warm. He and Marion both look very fit, and I think that if he does not try to do too much he will have a restful and creative year. You can imagine what a joy it was to have first-hand news of you.

Term has begun, and, at present, I am simply drowned in a perfect ocean of students. One or two look promising, and I believe that I can get something started with them. I was amused by a Nazi student from Berlin who asked me whether I was a Jew, and, on learning that I was, explained that he could not work under me. I sent him along to a colleague who told him that, for his subject, (the sources of Hegel's philosophy of law) I was the only person from whom he could get help in England. So he complained despairingly that all the people who might help him in Germany had been dismissed and when he came to England for help he was assigned to someone with whom he dared not work! I was sorry for the lad, but his dilemma was really comic.

I have been up to Edinburgh where I had the first really grand book-hunt of months. For a shilling I found a perfect first edition of Locke's *Two Treatises* and for five shillings a bound set of all the tracts of Old Dean Tucker.¹ And on a hand-barrow I found a really fine copy of Francis Hutcheson with David Hume's signature on it for half-a-crown, so I felt I really had a good day. In the evening I spent an hour at a vast meeting to commemorate the centenary of Charles Bradlaugh. When I left to catch my train an old gentleman came to me and said that as a boy of eighteen he had dined at James Russell Lowell's to go on with the latter to hear Bradlaugh speak; it was, I think, sometime in the late seventies. He also told me that in 1885 he heard Leslie Stephen speak to an ethical society, in Glasgow, and tell them that when America passed through a great economic crisis she would, with her energy and resilience, set an example in constructive determination to the whole world. I think that is a pretty piece of prophetic insight.

³ In 1938 Diana Laski received her B.A. degree from Lady Margaret Hall, Oxford.

¹ See, *supra*, p. 1384.

In the way of people, the most interesting thing to tell you of was a long dinner alone with Sankey. He wanted to consult me on the queerest problem I ever encountered. Perhaps you know that in the general economy move our judges' salaries have been cut ten per cent and there has been deep resentment about it owing to the doubt whether this is constitutional. One judge is so indignant that he has refused to pay his super-tax and challenged the revenue people to sue him for it. The latter appealed to Sankey who, on my advice, replied that as a judge he could not advise on whether a prosecution should be instituted or no: that was a matter for the Attorney General as the legal adviser to the government. So there the matter stands, about as curious a position, I think, as has ever turned up under our system of government.² I was interested also when I went to our Royal Commission on legal education and examined Lord Justice Greer to drive him into admitting that there was no serious legal education attempted by the Inns of Court. When I suggested that their vast funds might not unjustifiably be used to create jointly with the universities law schools which might rival Harvard he said that he had often thought this might be a good thing to do but the Inns were terribly conservative and would resent the suggestion that the time for change had come. Practically he said in terms that the time for change had come but that one must force it on the lawyers if one wanted to do anything. A queer position to take up, which I think made his fellow-lawyers there pretty uncomfortable.

In the way of reading two things have interested me. A book by my colleague Jennings *The Law and the Constitution* is, I think, the ablest criticism of Dicey's essential position so far written; and Galsworthy's last novel³ has one excellent thing in it—a perfect picture of the cruelty and hypocrisy of the English divorce law. But the rest of the novel is a pretty sad business, no firmness of outline and a perfect blizzard of sentiment.

Our love to you, dear Justice. Please keep fit and well for I want to come over to see you next year.

Ever affectionately yours, Harold J. Laski

²The reduction of salaries had been voted in 1931; in July 1933 the judges had filed a memorandum with the House of Lords urging that their salaries should be restored. When their petition came before the Lords in November, Sankey, the Lord Chancellor, opposed the judges' petition, citing numerous prior instances on which the salaries of judges had been reduced. The Chancellor's position prevailed.

³*One More River* (1933).

Devon Lodge, 28.X.33

My dear Justice: I have been very driven these last weeks. A big by-election in my own constituency here (which we won with a resounding majority) and the endless process of German refugees — a pitiful tale) has taken up all my time. But I have managed to see something of Felix, and the first thing I want to tell you is that he and Marion are both well, and that, (as was to be expected) he is a resounding success at Oxford. Not only has he a great crowd to his lectures, but he has made a very real impression on the dons; and I hear from all quarters the kind of accounts of him that warm a friend's heart. You and I, of course, knew that it would be so in a civilised place. But the unanimity and depth of conviction is a pleasant thing to hear. And I find him (need I tell you?) as electric as ever. In a grim and angry world it is good to have him alive.

I have been doing so much that I hardly know what to pick out to amuse you. But I think you would like most to hear of a very jolly lunch I had with Lady Oxford the other day. First let me say that she enquired with great warmth after you: "an old love of mine." Then we agreed on many things worth recording. First that Arthur Balfour masked a passionate love of power beneath a mask of nonchalance. We agreed that Lloyd-George was incapable of common honesty but that he was certainly the cleverest politician that this country has known since Disraeli. We scrapped pleasantly about America. For the most part the Americans she admires — like Theodore Roosevelt — I regard as tinkling cymbals; and though I admire Henry Adams's *History of the United States* I think his *Autobiography* a sophomore performance, full of the false profundities of which one ought to cease to be capable at twenty-five; but she thinks it a really great book which, *mirabile dictu*, she puts among the great autobiographies. For a woman of nearly seventy, she is an amazing creature — vivid, absolutely fearless, and with a pungency of utterance that is quite unforgettable. I had also a very interesting dinner with the German dramatist (now a refugee) Ernst Toller. He, too, is an unforgettable person, exquisitely simple, and, in the best sense, a free spirit. It was grand to meet a man who has my view of Heine as the finest soul in German letters. We agreed that though Goethe was the profounder man you cannot love him as you love Heine; not least because the latter knew how to hate his enemies. It was wonderful to see the complete absence of bitterness in Toller though he has been two years in prison and twice sentenced to death. He takes all this as the incidents of a career in much the same kind of way that one might take a poor reception for a book. I heard him tell of his experiences in prison and especially of the warden's slow conversion to the idea that he was not a criminal, but a man who happened to think differently from

the existing *régime*, and the awkward realisation that differences in ideas ought not to involve cruelty of treatment. He pleased me too by his vehement denunciation of Shaw as a man who was never concerned to respect personality. That, after all, is the secret of a respect for freedom. For if, as Toller said, you are willing, as Shaw is willing, to impose your ideas on the world you take the right to persecute in your stride; and at that point it is clear that you lack sufficient confidence in the claim of personality to respect to be willing to argue with it. Once that is your position the line between your outlook and the Inquisition becomes terribly thin.

Of books the main thing I must do is to urge you at least to look at *Three Cities* by Sholem Asch — a translation from the Yiddish. I think it belongs naturally to the class of Dostoievsky and Tolstoy — the account of the Revolution, especially its pictures of bewildered adjustment to the unknown are, I think, not unworthy of the battle pieces of *War and Peace*. Then I read Winston's first volume on *Marlborough* — a really brilliant piece of special pleading, too special, I believe, as you can't make any statesman of that period into the saintly statesman for the simple but sufficient reason that no one is saintly in an age when men are gambling for their heads. I also read an old book — Tyler's *History of the Literature of the American Revolution* with great pleasure. There were Kings before Agamemnon Parrington.

My love to you dear Justice. Keep well. I shall send Felix back to you refreshed and eager.

Ever affectionately yours, H. J. Laski

Devon Lodge, 17.XII.33

My dear Justice: I am afraid you have put me among the damned. But the truth is that I have been so drowned in work that I have hardly known where to turn. I have had a vast and difficult report to write for a government committee to which I belong; and what with German refugees, the Industrial Court, an article for the *Atlantic*,¹ and the normal academic work, I have only just been able to meet the problem of time. However, term is over; the worst pressure has relaxed; and I turn to you at once with the assurance of pardon for my sins.

I must give you news of Felix first. There is no doubt that he has made a profound impression. I hear that alike from dons and students in Oxford; and the others he meets, here and elsewhere, are all captured at once by his personality. And I think it has done him good. He looks rested and peaceful. He has a sense of perspective about things born of distance; and I think we shall return him to you in the summer with, so to say, increased horsepower. I need not tell you what a joy it is to me

¹ "The Roosevelt Experiment," 153 *Atlantic Monthly* 143 (February 1934).

to have him here. We manage to see each other about once in ten days; and I get from him the old electric stimulus in a fully satisfying way. And I observe with special pleasure that he has the same effect on the best of my colleagues.

Things political are pretty bad with us; no one is deceived by the temporary turn in trade. And the new Germany is a terrifying portent — brutal, beastly, and belligerent. Some of the men who have come to me for help are figures of world-wide distinction now almost destitute. Others for whom I have been seeking help are in concentration camps; one man, for instance, is a specialist in ancient Chinese history and is there for having expressed sympathy with Chinese communism as the way of life most suitable to their historic conditions. The whole thing, not least the Reichstag trial,² is a perpetual nightmare; and the sense of helplessness one has as chaos comes ever more near is a grim experience. I have never seen a whole continent before drift with open eyes into a dark age.

Your secretary sent me a charming letter the other week with an emphatic request for books. There are a few I want to urge on you which combine pleasure with instruction. First and foremost I put the *Age of Johnson* edited by Turberville (Oxford Press). I think you will find the chapters on travel, art, architecture, lawyers, booksellers and authors not less enchanting than I did. I have also enjoyed the new Lytton Strachey essays.³ With one exception I don't think they are of the calibre of his first books; but they are an expression of a first-class mind working with first-class material. Then I enjoyed Brinton's *English Political Thought in the XIXth Century* — clear-headed, very well written, and with a (to me) pleasing ironic power; he is particularly good on Coleridge, Bagehot, Kingsley, Newman and T. H. Green. Of novels I have had little experience these last weeks, though I read on a night-train to Newcastle a good detective-story (I almost feel your secretary's shudder) by Agatha Christie called *The Death of Lord Egerton*.⁴ And I emphasise again the quality of Sholom Asch's *Three Cities* which I believe belongs with the stuff to which quite permanent quality attaches.

I have had no chance to hunt books; and catalogues, for the most part, have been either too expensive or barren. I did find a very nice set of the *editio princeps* of Descartes; and a rather rare volume of old Dean Tucker's tracts; but they can't be put in the first class. My chief experience is a different one. There was a famous early English socialist named

² The trial of Van der Lühbe and the four Communists, Torgler, Dimitroff, Popoff, and Taneff was currently in process before the Leipzig High Court, ending in the conviction of Van der Lühbe.

³ Lytton Strachey, *Characters and Commentaries* (1933).

⁴ This title has not been identified; perhaps the reference was to *Lord Edgware Dies* (1933).

Bray who, in the 'thirties, published a *Labour's Wrongs and Labour's Remedies* which is a classic of its kind. Nothing is known of him save that book. But last week but one I was doing an industrial arbitration in Leeds and wandered into the public library. I found there a mass of papers relating to him which had remained untouched for nearly forty years. It appears that about 1840 he got sick of failure and migrated to Boston where he had a brother who was comfortably off. The brother wrote home regularly to his mother in England and from these letters one can reconstruct nearly fifty years of the socialist brother's life. The letters were left to the library by some donor and as the librarian had never heard of Bray he did not, of course, know anything of his significance in the history of Marxian socialism. But at least he catalogued the collection under the name, and now we have made a grant to a clever young student of mine to go and see what he can do with the manuscripts.

One other tale I must tell. A poor German scholar came over, a man who had written good, if not first-rate books, and is about 75 years of age. He explained that for years he had wanted to write a history of English political economy before A. Smith; he had lost everything; did I think I could get him a grant to cover his living costs for two years while he slaved at its completion. With the caution of experience I asked him how much he wanted to be comfortable. He said if he could have thirty shillings a week he could manage very well. I got him two pounds and had difficulty in persuading him that he would not be extravagant in taking it.

This should arrive by the New Year. It brings you my love, dear Justice, and warm good wishes. *Ever affectionately yours, H. J. L.*

Devon Lodge, 26.XII.33

My dear Justice: I have had two days real holiday, and I almost begin to feel that I know what the quiet peace of scholarship is again. For I turned to 17th century French political thought and worked at a little book published anonymously in 1657 and called *Le politique du temps*. It is usually attributed to a writer under the Fronde named Davenne and all the pundits ascribe it to him like a flock of sheep. When I read it, I thought it seemed familiar, and after a morning's digging I discovered that it was a reprint of a pamphlet written about 1573 and published in the famous collection of Simon Goulart called *Mémoires d'état sous Charles IX*. Alas! the pleasure of original discovery isn't mine as Moreau the bibliographer noticed this in 1849.¹ But it is an interesting comment on the habits of historians that a book which is clearly sixteenth

¹ C. Moreau, *Bibliographie des Mazarinades* (vol. 2, 1850), p. 361.

century in character should have taken them in. Obviously each copies the other's footnotes eagerly and embellishes them. The last of them describes it as the "ablest and most typical of the Mazarinades." I think it is really a good example of the vice of specialism. The modern people know their own little period and nothing else, so that the most elementary deception, even when it is a deception on its face, takes them in.

Then I have had a week of early bed with a huge dose of Gibbon; it is, I think, about seven years since I took a good look at him. He seems to me greater than ever — and Chapters XV and XVI² are greater in their power of erosion by irony than anything Voltaire or Holbach ever did. I am a little baffled as to how a man as selfish, as pompous, and as self-satisfied as Gibbon could have written so great a book. Incidentally, it seems to me that the clue to his whole atmosphere is partly in Bayle (who still needs *the* book to be written on his influence) and partly in Hume's essay on Enthusiasm which is surely the basis of the temper of those two chapters. I thought, too, that chapter 44 remains the supreme general account of Roman law.

I had also one good book hunt which was grand. Imagine a shop in a cellar in a slum near Houndsditch. The books were without order in vertical columns on the floor. The man might have been the offspring of a marriage between Fagin and Mrs. Camp; for he was in a kind of perpetual moisture from gin, and he constantly shot round corners of the shop as though on guard to see that one stole no books. I found all the contemporary pamphlets on the general warrants case, three of them being the personal copies of Lord Camden and though they are not annotated, they are underlined so that one can almost see the path his mind travelled in writing *Entick v. Carrington*.³ I also found three contemporary replies to Rousseau, and a nice little lot of anti-philosophic pamphlets of the 18th century; but best of all I got for seven shillings the complete set of Fréron's *Année littéraire*, much the best of the anti-Voltaire journals of the age of Louis XV. Altogether I suppose I spent thirty shillings, and the effect produced on the bookseller was as though he had been visited by J. P. Morgan. I was so dirty when I left that I asked him if I could wash my hands. He took me down to his bedroom which consisted of (a) a chair loaded with old novels (b) a camp-bed covered with early nineteenth century plays and (c) a chest containing a vast collection of scrap-books and keepsakes mostly of the time of George III. From under the bed he produced what I first thought was a soup-tureen

² "The Progress of the Christian Religion" and "The Conduct of the Roman Government towards the Christians."

³ 19 State Trials 1030 (1765); Lord Camden held in that case that seizure of books and papers taken while a defendant charged with sedition was being arrested, was unlawful at common law.

but which was in fact a utensil for more private purposes. This he filled with water from a tap in the yard, then from his waistcoat pocket he brought out a small piece of soap, and, as a kind of climax to the whole, he took the pillowslip off the pillow to provide me with a towel. Why go to the Gobi desert or to Tibet for adventures? Is it not invariably true that they lie at one's door? I knew exactly what the lower reaches of Grub Street were like in the 18th century. I add that I do not need to assure you how thoroughly I enjoyed myself.

By the time this comes out the January number of *Harper's* should be out. Will you ask Mr. Howe to get you a copy and read you a piece of mine there on Brandeis? I am anxious to know what you think of it as it represents a real effort to paint the inside of a really interesting character.

Felix and Marion came down for the night last Wednesday — both well *and* very happy. I have never seen him look so well or so peaceful. Oxford clearly gives him a real rest and he will be physically a different person on his return to you.

I read the other day an interesting little book which is worth noting — *Burke and Coleridge* by Alfred Cobban. It is the best discussion I know of the lines of thought out of which conservatism as a real philosophy developed. You can see in it where Hegel, Savigny and Maine all came from. And in a very different line I read a Xmas present *Six Elizabethan Tragedies* by Webster, Marlowe *et al.* which has a good critical introduction by the editor George Rylands. His tracing of the line of descent of Tennyson's best passage in "Maud" is a beautiful piece of criticism, and the comment, in the last sentence of the introduction, is really quite masterly.⁴ I also re-read Matthew Arnold's *Friendship's Garland* with infinite amusement and very considerable admiration. I gather that it is the fashion nowadays to decry Arnold as a critic; but I must say with emphasis that I know no one writing who has quite his body of ideas or his power of social insight. On the whole I think the Victorians did as good a job as any other age; and the present tendency to think them stuffy and complacent misses, I think, somewhere about two-thirds of the story.

My love to you as always,

Ever affectionately yours, H. J. L.

Devon Lodge, 6.I.34

My dear Justice: Your secretary's note was very welcome. As I told him, it looks as though I can get over to America in January of 1935; so please

⁴ "The authors I have chosen are the six trails into a pathless jungle where sooner or later every reader loses his way." George Rylands, *Elizabethan Tragedy: Six Representative Plays (Excluding Shakespeare)* (1933), xix.

keep really fit for then. And I need not tell you how glad I was to know you liked my piece on Brandeis. It took much time, and I was not without anxiety about the result.

We have just got back from a week's holiday in Antwerp — good talk, good food, and an exhibition of Rops' etchings which was quite marvellous. I never realised how fine an artist he was until I saw this massive coherency really well arranged. I had an interesting evening there with a lawyer named Dabin¹ who professes at Louvain and has some acquaintance with American law. He was very eulogistic of Morris Cohen, which pleased me; and very critical of Pound, which pleased me hardly less. On Pound he made the very good points (I) that he is more interested in his categories than in his facts (II) that he has no sense of the proportionate value of his authorities and (III) that underlying all his talk is a simple Hegelian metaphysic of the significance of which Pound himself is wholly unaware. He spoke with great admiration of Cardozo. I felt, as I always feel with these continental jurists, that they are much more aware than we of problems of form, and much less aware of problems of substance.

In the way of reading, I have some pleasant things to report. I warmly recommend Alain's *Propos de littérature* which has just appeared. It has some really illuminating things, above all in his comments on Stendhal and his really devastating criticism of Flaubert. And I thought there was real substance in a distinction he drew between remorse, which leaves a sense of bitterness behind it, and repentance which has a cathartic effect. Then I got real pleasure from Croce's *Short History of the 19th Century* — a really brilliant performance in which, for the first time in my knowledge, the canon of the age is set in adequate perspective. I also read with interest the unpublished letters of Coleridge edited by an American scholar named Griggs. It was a good piece of work; and though there is a good deal of desert, the oases make the journey well worth while. His flashes are sometimes supreme. What he lacks is cohesiveness. And he makes out a good case for himself about the accusations of plagiarism. This took me on to his Shakesperian lectures and here I must say he is quite definitely the master of them all. On Iago, Lear, Macbeth and Falstaff he saw things more exquisitely than anyone else; and it is remarkable how constantly he has established the angle of vision on which we ourselves depend. I read also the Lucas *Life of Lamb* which was wholly charming; and I emerged with the sense that he is quite definitely the most loveable character in English letters. Which reminds me of a good remark made to me the other day by a literary friend. When Shelley met Mary Godwin the famous greeting "Mary"! "Shelley"!

¹ Jean Dabin (1889—); author of *La philosophie de l'ordre juridique positif* (1929), *Théorie générale du droit* (1944).

has a colour and beauty one never forgets; but had she said "Percy" in reply the bathos of association which somehow clings to the name would have deprived it of all its peculiar tang. Incidentally the Lamb strengthened all my dislikes of Wordsworth as a person — an unctuous egoist if ever there was one. One day I must write a piece on his political opinions and show that he never thought a single thought that was not commonplace after 1794. The last book on which I want to comment you may know, if not I think you will get from it at least as much pleasure as I. It is J. M. Robertson's *Short History of Freethought* which from 1600 onwards seemed to me a really masterly piece of work, independent in its judgments and full of really new *aperçus*. I was specially interested in the problem of the impact of new doctrine, not least in England. It is curious, for instance, to note how much in advance of the scholars the gifted amateurs are, and how little influence the latter exert until the professionals begin to take them up without undue acknowledgment. And Robertson, by the way, is particularly good on the deistic controversy of the 18th century which I have always thought was one of Leslie Stephen's less happy discussions.

We see Felix and Marion pretty continuously. There isn't much doubt that this adventure is doing Felix a world of good. He has lost the sense of strain he had when I was in America in the spring, and is getting a new perspective and peace of mind which are very good for him. And he is doing a very good job in making the elect realise the importance of America and the inner significance of the Roosevelt experiment. I need not tell you what a joy it is to have him on hand.

Our love to you as always.

Ever affectionately yours, H. J. L.

Devon Lodge, 28.I.34

My dear Justice: A long tale of work! and I don't see hope of a real leisure period until some of my lectures end in about a month from now. However I have finished one vast government committee and got out its report,¹ and a labour party committee on constitutional change seems also to be within sight of its goal. But it is hard work and I really long for the leisure to do some of my own writing.

Everything, however, goes well. I manage to see Felix about once a week, and to draw the refreshment you would expect from him. He is very fit and happy, and the change, clearly, is doing him a world of good. And as his house has become a kind of Mecca for the people doing law

¹ The reference is probably to the *Report to the Minister of Health by the Departmental Committee on Qualifications, Recruitment, Training, and Promotion of Local Government Officers* (32-306), dated January 10, 1934, of which Laski was a member.

at Oxford I think he is really exercising some influence there — a real achievement as that is no easy thing in a place so self-sufficient as Oxford.

There are some books I want to recommend to you. First a French one — *Propos de littérature* by Alain. It has detached brief essays on Montaigne, Pascal and the like, and a remarkable power of hitting the jugular which would please you. Then an admirable book of critical essays by F. L. Lucas, a Cambridge don. He is specially good on Proust, and on modern criticism. One of the essays in which, *inter alios*, he tilts at T. S. Eliot and Herbert Read, the high-priests of the moderns seems to me done in the grand style or pretty near it. I also greatly enjoyed a little *Life of Milton* by Rose Macaulay, somewhat in the Lytton Strachey manner but built on a very real knowledge and full of *aperçus*. And, above all, I recommend J. E. Neale's *Queen Elizabeth* which is not only a work of great scholarship but also of real art. If I were reviewing it, I should say that the view taken is too simple, too much a study in blacks and whites, that the case against Mary Stuart isn't so clear, and that the Essex episode is far from being as simple as he makes it. But all in all it is a grand piece of portraiture a hundred times better than any other, and the proof that the real scholar can do the popular book on the big theme very much better than the elegant trifler who sits down to do a Freudian analysis upon the basis of a recovery of his schoolboy knowledge.

I have read other things without emotion. Eustace Percy's solemn pronouncement² seemed to me pontifical mysticism without power to distinguish between the essential and the unimportant; and I really don't believe, despite his persuasiveness, that Mussolini has discovered a new discipline which, by scotching political ambitions in the masses, enables them to devote their leisure to the discovery of their souls. Nor was I greatly impressed by Hervey Allen's *Anthony Adverse* which sells here, as with you, by the thousand. It seemed to me lacking in tautness, to be merely a series of incidents without any principle of growth. And Sinclair Lewis's new novel³ was a disappointment — a piece of mechanical bookmaking born of an illegitimate union between the method of Arnold Bennett and the spirit of H. G. Wells. There was never a time, I think, when there was so much competent book-making and so little that is final in value. The time has come to make a real effort to establish a canon for the age.

The atmosphere here is very grim. Hitler grows worse; and it is evident enough that the long-term prospects for peace are bad. He has shown that persecution, ardently enough pursued, can in fact break the spirit of a people, and all its consequences are those pointed out by

² Lord Eustace Percy, *Government in Transition* (1934).

³ *Work of Art* (1934).

Aristotle in the fifth book of the *Politics*. Roosevelt and Russia seem to me the only two countries in the world where something is being done about which men are entitled to hope. We are in a bad way. There is no energy and no clarity of purpose. The government has nothing to say and its opponents lack the courage to say the things that need to be said. It is a tragedy, because among the masses is a confused stirring of spirit which could be turned to great ends under adequate leadership. As it is one feels drift, complacency and apathy. Great things do not, Micawber-like, turn up in civilisations; you have to go out and search for them in the high-ways and bye-ways. But I do not see the politicians who are making the search.

My love to you as always.

Ever affectionately yours, H. J. L.

Devon Lodge, 3.II.34

My dear Justice: The main thing of which to tell you this week is Felix's address to the Institute of International Affairs — a body half-eminent, half-expert to which it is far from easy to speak. It was a discussion of the Roosevelt experiment and the Constitution, and I thought it about as masterly a job as I have ever heard. He had great clarity, simplicity, and directness. But, even more, in the discussion, in which there was much criticism and no little hostility, he really scored a triumph. He knew, of course, infinitely more than his critics; but to keep the audience in a mood where its sympathy was always on his side, and to show tact, and charm, and discretion in keeping the ball rolling always to your opponents' goal isn't easy; but Felix did it like a great artist and I sat there, as you would have done, bubbling with pride. It's not everybody who can make an audience feel that *e.g.* poor Bernard Shaw is, of course very bright and brilliant as a rule, but that this is one of his off-days, and the lecturer, who is a very kind person, is letting him off nicely because he is an old man. I wish you could have heard it and rejoiced with me in its consummate mastery and artistic excellence. . . .

Other things are small by comparison. But I must not omit the visit from a really high-brow critic who laid down the propositions (I) that there are no important English novelists. There are pleasing story-tellers, like Fielding but they are not important. (II) There have been no critics in the English literary tradition except Dryden and T. S. Eliot. (III) *Hamlet* is a terrible dramatic failure redeemed only by some good lines of poetry. All this emerged in an interview he came for with me on the political situation. So when he came to the general part I told him (I) that my favourite poet was Longfellow (II) my favourite novelist was P. G. Wodehouse and (III) that I thought James Russell Lowell the

supreme critic in the nineteenth century. He swallowed it all with complete simplicity and explained as he left that he could not understand why in the realm of affairs I was a radical while in the realm of literature I had a "typically literary society mind." I said with blithe innocence that suburban literary societies surely did for the English tradition what the Academy did for France — they fixed the standard of taste, and he fled bewildered and baffled without a thought that I was pulling his leg.

Of reading there is not much to tell. I have been busy with politics since I wrote last for causes with which you would emotionally agree and intellectually disapprove. The most interesting part of it has been arranging a private discussion between the Russians and Lord Cecil to see whether common ground for common action cannot be discovered to ward off the very real danger of a European conflict. I don't know yet where it will lead; but at least it is effort in a very good cause. And then I have been busy trying to raise money for some German academic exiles, and in persuading our never-to-be-sufficiently damned emigration people not to put obstacles in the way of some of the poor devils trying to earn a living. My own feeling is that the kind of diplomacy this type of effort involves is a fascinating combination of persuasion and blackmail. You tell the minister he is a great man in one breath, while, in the other, you explain that if he does not think your way you are going to make his name stink in the nostrils of all decent-minded people. He did give way and so five of them have jobs which will at least keep body and soul together for them. I hope this will be accounted unto me for righteousness on the day of judgment!

My love to you.

Ever affectionately yours, H. J. L.

Devon Lodge, 1.III.34

My dear Justice: First of all, and above all, a very happy birthday. I wish that I could have dropped in for lunch. There is so much to tell that needs talk rather than the written word that the insulation of distance is unpardonable.

Life is terribly hectic. But oases like Howe's very kind last letter are welcome indeed. I'm glad you liked my article on Roosevelt. Whether he wins or loses I think it is one of the essential pieces of political courage in modern times; and it is absence of courage in democracies that is proving their destruction. And I am glad you liked my friend Neale's book on Elizabeth. I thought it was a pretty good example of the professional proving that, at least now and again, there is something to be said for knowing a subject before you write about it.

There seems no limit to the things I have been doing. Meetings

to secure the release of Dimitroff (the world seems a cleaner place now that he is free)¹ meetings to protest against the wickedness of Austrian fascism and its massacre, the electoral campaign over the London County Council,² beside the endless stream of academic work. It is a grim time to live in with values all confused and doubtful, and most people afraid to speak forthrightly about anything. I fear we are in for an iron age in which the chances of decency will be small; and it is not going to be easy for those of us who think that the claims of reason against passion are paramount. But I suppose no civilisation can confront its most basic problems without uncovering the naked savage in man. Decency seems to be a very thin and fragile covering at best.

In the way of reading there are several things I want to recommend. Ernst Toller's autobiography *I Was a German* is a beautiful book the charm of which will, I am sure, capture you as it did me. I was impressed also by Charles Beard's *Idea of National Interest* which I thought a most useful disentanglement of a complex notion. I also enjoyed a volume of critical essays by G. W. Stonier called *Gog and Magog*, and another very amusing collection by Ivor Brown called *I Commit to the Flames*. These, I think, all have the right mixture of light and idea which you require. More solid but illuminating is Alexander's *Beauty* which would I think interest you for its account of the artistic process and the relation of value to beauty.

Felix and Marion flourish. He goes ahead like a house on fire and I think makes an impact everywhere such as you and I would wish. Of his Cambridge lectures a colleague wrote me "that quite unquestionably they were the most distinguished performance in Cambridge in years," and a talk on the wireless enchanted Diana not less than Frida, both of them grimly critical judges.

I must not omit my pet discovery of the moment; one day, if I get a fortnight of real leisure, I will write it all out in detail. I have found that Sieyès's constitution was built almost wholly on Spinoza's *Tractatus politicus*.³ I have found 26 separate institutions so identical down to minutiae that the resemblance must be born of influence. Of course I can't prove it in the full sense. But I think I can show that the identities are too great to be capable of explanation on grounds of chance. And another curiosity has come my way. The conspiracy of Rohan against

¹ Georgi Dimitrov (1882-1949), following his acquittal of the charge of firing the Reichstag, went to Russia.

² Laski was elected Alderman of the Metropolitan Borough Council of Fulham.

³ Abbé Joseph Emmanuel Sieyès (1748-1836); his first contribution to constitutional theory was in his pamphlet, *Qu'est-ce que le tiers-état?* (1789); his greatest, was his draft of a perfect constitution after the *coup d'état* of Brumaire.

Louis XIV for which the former was executed ⁴ produced a plan of constitutional reorganisation for France which also has many resemblances to Spinoza's ideas. Now I find that Rohan's adviser was Van den Ende who taught Spinoza Latin and I wonder if (a) that is the source of the connection and (b) if Spinoza who corresponded with V. der E. to the end of his life was cognisant of the plot. It is a pretty mystery story, unworked out, so far as I know.

Well — again a happy birthday, and my love as always.

Ever affectionately yours, H. J. L.

Devon Lodge, 16.XII.34

My dear Justice: I will not apologise for my long silence. I merely ask a generous man to forgive. I now resume in the old style and with undiminished affection.

It is a terribly busy year. Academic business apart, I am trying my hand at being an alderman on our local borough council. Partly I am trying to make its public libraries be what they ought to be; and, partly, I am trying to reorganise the local civil service on lines which will give it some drive and efficiency. It's a dog's work; but I think it is worth while. And I have written a book which I hope to publish in April,¹ which won't, I fear, be popular with the eminent but is at least as realistic an account of what the state is like as I can get down on paper. It all takes time; and as I am drowned amid students, especially the poor devils of *émigrés* from Germany, I do not always know how to avoid being overwhelmed.

It is a bad Europe just now. I don't agree with the alarmists who see war just round the corner. But the seeds of war are there, and they are sprouting. And I don't think it can seriously be denied that Fascism grows. One sees it gaining ground month by month in France, and Hitler's grip on Germany is at present unbreakable. Our government is a bad show, with no real foreign policy, no power to co-operate with America (the one thing that should be the pivot of any sane British policy) and with no mind to embark on any creative domestic adventures. I think myself that we shall have a general election next July, and I hope then that there will be a better House of Commons.² But as things are the case for representative government goes by default. People learn from inaction to doubt Parliament's power to tackle things decisively, and you

⁴ Louis de Rohan (1635–1674), the scandalous Chevalier de Rohan, after his conspiracy with the Dutch was beheaded by Louis XIV. Franz van den Ende was also executed for his participation in the same conspiracy.

¹ *The State in Theory and Practice* (1935).

² The next General Election did not occur until November 1935.

find, too widely and too unnecessarily, a temper of apathy that bodes ill for a political democracy. We need leadership and we are not getting it. That, I think, is always a bad state of affairs. I feel as I travel around that I understand the epoch which led to the French Revolution. We need a remaking of foundations, and that is an adventure which the guardians of the old order are not prepared to attempt. The great consolation, of course, is reading and work. Some books have recently appeared which I should like very warmly to recommend. Have you read Crane Brinton's *Decade of Revolution* (Harper)? I think it a brilliant panorama, scholarly, detached, imaginative. I hope you will persuade your secretary to embark upon it. And I enjoyed Croce's *History of Europe in the 19th Century* (Harcourt). It is a little too "liberal" for me; but is a profound book, with style and colour in it. And I do beg you to read H. G. Wells's *Autobiography*. I don't put it in the class of S. Augustine or Rousseau. But it is not much below them — a really truthful picture of an extraordinarily fertile mind. It is terribly interesting, too, as a picture of the inherent weaknesses of the intellectual, his vanity, his inability to co-operate, his lack of the power of endurance and persistency which alone gets things done. Wells is like a butterfly which flits from one flower to another, never staying long enough at any to sense its beauty. But it is the tale of a big man who has had his insights into the universe. In the way of fiction I can only recommend the new Wodehouse *Right Ho, Jeeves* which is in the supreme tradition. A really good detective story has not come my way for months.

All your friends are well. Pollock I have not seen, but I have met those who have and they give a picture of unfailing vigour. I did meet Leslie Scott, busy and well. I have seen a little of Bertrand Russell. . . .

I miss Felix greatly, as you can imagine; he lent a special charm to Oxford and almost galvanised it into life. He appears to retain deep faith in the New Deal — more, I imagine, than I can permit myself. But he can't outdo me in admiration for Roosevelt as a person even though I don't believe he can succeed. America excites us all as never in my lifetime. Even at this distance one has a sense of something big being tried; and the superiority of effort to our policy of do-nothingism is immeasurable. I was glad to see that Harvard's new President did not shrink from making clear his attitude to Pound. There is one of your real victories, for I remember that as far back as 1916, when Felix and I were still under the spell of his learning, you were sceptical of its significance. You were right and we wrong . . . I hear occasionally from Brandeis, and he never fails to give me news of you.

I must not omit to tell you that one of my great pleasures in these last months has been J. B. Atlay's *Victorian Chancellors*. Have you ever

read it? The chapters on Brougham, Campbell, and Westbury are superb. And the story of the latter meeting Mme. de Genlis who informs him that she keeps all her male books in one bookcase and her female books in another, to which he replies "Ah, madame, you do not then propose to add to your library" is alone worth the price of admission.³

I give you warning now that early in April I hope to descend on you. I propose to take off a month in America and I needn't say that a visit to 1720 is an essential object of my programme.

Our love to you. This letter ought to arrive about Xmas. I hope it will bring you peace and energy for the new year.

Ever affectionately yours, H. J. Laski

Devon Lodge, 24.XII.34

My dear Justice: This is one of those grim weeks in which you do an accumulation of irritating nothings, which keep you busy with no results to show. I have been buying Xmas presents, examining Ph.D.'s, trying to persuade the Lord Chancellor to abolish imprisonment for debt,¹ correcting the proofs of my book, and doing a chapter on committee government for a volume to celebrate the centenary of the Municipal Corporations Act next year.²

I have found some nice books, if rather out of the way. They are more or less contemporary criticisms of Grotius, works of the natural law school which culminated in Thomasius in the 18th century. I found them in Edinburgh where I had gone to give a lecture. And at four shillings a volume I thought them cheap and interesting. Also I picked up a very nice letter, seven pages long, of old Jeremy Bentham. It is a draft of a petition to the Prime Minister about Panopticon, a preparation on his part to try and get his money back. The old man sputters sparks admirably, with hints at a conspiracy of the great to prevent him from receiving compensation. Evidently he did not send it. But it is pleasant to see how human he was.

In the way of reading a number of things worth comment. You will not read the selected *Correspondence of Marx and Engels*. But they are

*The editor has not found the anecdote in Atlay's volumes.

¹ In July 1934, the Home Department had submitted its *Departmental Report on Imprisonment by Courts of Summary Jurisdiction in Default of Payment of Fines and Other Sums of Money* (Command Papers #4649). In 1935 legislation was adopted, along the lines recommended in the Departmental Report, curtailing substantially the power of courts to imprison debtors; 25 & 26 Geo. V, c. 46.

² "The Committee System in Local Government," *A Century of Municipal Progress, 1835-1935* (Laski, Jennings, and Robson eds., 1935), 82.

very interesting letters. The two are unpleasant — acrid, contemptuous, harsh. They are not very good (who is?) at short-term political prophecies. But in long-term diagnosis they deserve a medal; and there is a letter from Engels on the basis of social change to one Schmidt which deserves to be called really masterly.³ Then I have read a book by an American scholar, Miss Whitney, on *Primitivism and the Idea of Progress in the 18th Century* which deserves high marks. She is a little *simpliste* as (forgive me!) some of the Americans tend to me [*sic*]. If a man like Adam Ferguson,⁴ for instance, runs the ideas she is looking for her critical faculty deserts her, and she shouts a eulogy instead of recognising him for the pinchbeck Montesquieu he was. But she has dug up well a mass of to me unknown stuff, some of it really significant. Then a charming book on Condorcet by one Schapiro of New York. Even he cannot make him more than very good second-rate. But he has painted his picture well, and the book sustains interest all the way through. All this, say you, is very highbrow stuff, suitable only to those relentless academic people who spend their lives in that state of resentful coma they too easily regard as research. Like Ireton, you demand more blood, and, by God, sir, you shall have it. I commend to you two shockers and one “straight” novel. The first are (I) *The Sittaford Mystery* by Agatha Christie, good at least in the sense that my villain was a blameless innocent at the end; and (II) *He Laughed at Murder* by Richard Keverne, which is the thriller rather than the detective story proper, but well-written and with those breathtaking moments wholly appropriate to quiet lives like yours and mine. The straight novel is *Elizabeth* by Frank Swinnerton which both Frida and I thought charming — characters alive, no damned Joyceism or Eliotism or any of those new modern patterns which I find so abhorrent. And I commend a volume of short stories by Winifred Holtby called *Truth is not Sober* as the ideal accompaniment for solitaire. They are not only witty: they are also malicious. I take it that you will find an invitation in the emphasis of those adjectives.

Of people there is not much to tell. I had lunch with Lady Oxford, who enquired eagerly after you. She is as brilliant as ever, with a certain mellowness which is attractive. I find Elizabeth (Bibesco) a little trying. She is so full of what she said to eminent men in far-off places about nothing in particular that you can't help feeling that you are listening to extracts from a velvet-bound diary of a highly artificial society to which you have no desire to belong. Mackenzie King, the Canadian liberal

³ Engels to Conrad Schmidt, October 27, 1890, *Karl Marx and Frederick Engels: Selected Correspondence 1846–1895* (Torr, ed., 1934), 477.

⁴ Adam Ferguson (1726–1816), Scottish historian and philosopher; author of *Principles of Moral and Political Sciences* (1792), *Essay on the History of Civil Society* (1762).

leader, was there.⁵ I thought him dull and unctuous, continually emitting truisms with a heavy air of profundity *e.g.* "on the American continent Mr. Roosevelt is undoubtedly a popular figure." There were moments, my dear Justice, when I felt it quite difficult to be polite. I went also to a dinner at the Russian Embassy where I met the aviators who had rescued Schmidt and his colleagues from the ice-floes by which they were imprisoned.⁶ They told one of those heroic stories in the face of which one is simply silent because words are meaningless in relation to adventures of that kind. I had the same emotion that one has in reading the diaries of Captain Scott on his last expedition. And I must record the visit of a Chinese who came to ask me to lecture in Peking. He was uncertain of his English and therefore asked permission to read what he wished to say. He began "O most eminent professor" in superb oriental style, compared me with Hegel, Marx, Proudhon, F. H. Bradley, Bosanquet and Lester Ward, and ended by saying that, "were you to come generations of Chinese students yet unborn would greet you as their father." Now what do you make of that? I could not tell him that it was a direct invitation to break the sixth commandment, and I could not make my secretary (who is terribly young) refrain from giggles. But at least you will admit that this is one of the minor compensations for the pursuit of an academic career.

My love to you as always, dear Justice. Please keep fit and well.

Ever affectionately yours, H. J. L.

3.I.35

My dear Justice: Your telegram warmed my heart. And I found it on returning from Antwerp to an empty house sixteen hours late through fog in the Schildt. That was a real welcome.

I wish you could have been with us in Antwerp. First there was a marvellous exhibition of Brueghel and James Ensor (please get from the Library of Congress the *Catalogue raisonnée* of his etchings) which was a feast. Then I met an old Jesuit there who was a trump. He had been forty years out in China and had come home at eighty five to finish a grammar of Chinese dialects in comfort. I hope I explain myself when I say that he was one of those Jesuits who had ceased to be interested in dogma and was simply a civilised gentleman. His consolations in China were (I) Seneca — the most human, he thought, of all philosophers; (II)

⁵ William Lyon Mackenzie King (1874–1950); Prime Minister of Canada, 1921–1930, 1935–1948.

⁶ In March and April Russian planes had rescued Professor Otto Schmidt and his 101 companions who had been stranded on an ice pack northwest of the Bering Strait for some two months after the sinking of the Soviet ice-breaker, *Chelyuskin*.

Tacitus who saw more deeply into the habits of rulers than any other writer, and (III) Gibbon (in a Flemish translation) because Gibbon belonged to "the best of all centuries when men still hoped to make reason triumph over passion." He told marvellous tales of heroism among simple people — the peasant who carries his wife fifteen miles to a hospital to be confined; a doctor who walks all night through the snow to attend a village stricken with fever; a village of poor folk who all subscribe to send a bright lad to Peking because he showed aptitude for letters and maybe would become a sage bringing honour to the village. I saw in him that kind of wisdom which is born of infinite loneliness and infinite understanding. He said that what impresses him in the Europe he has recovered is that it expresses so exactly Goethe's word *Sehnsucht*, which I translate by the Scottish "wearying" — a sense of longing for things it knows to be good yet does not know how to attain. He said fine things like his belief that the best type of human being is he who consciously surrenders power over other beings lest he be poisoned by pride of authority. I have rarely met anything so impressive as the old fellow, and he was as physically beautiful as he was spiritually exquisite.

In the way of reading, I have not much to tell. I reread Zimmern's *Greek Commonwealth* there and thought it better than ever before, with a sigh in remembering that he will never write such a book again. I read Brandeis's new volume,¹ powerful and the expression of a noble passion, but, to me, unsatisfying because it was like the pronouncement of a believer in the Ptolemaic astronomy that the new Copernican world will not do. There's nothing at all in this desire to return to the simple verities of Jeffersonian Democracy. Then I read the new translation of Engels's *Feuerbach*, which you will not read, but which is, especially in its treatment of the social sciences masterly, not least in its emphasis (which O.W.H. will consider sympathetically) that the clue to legal doctrine lies in its economic context. And I re-read *Vanity Fair* which I thought nearly A-1 though I resented some of the not quite open moralising, and Trollope's *The Way We Live Now* which I thought definitely remarkable, even, in its way, on the level of all but the very best of Balzac. (There is no higher praise.) Frida, I add, read for the first time Zola's *Germinal* and ordered me to put in a special word that it was immensely impressive. I did not think so ten years ago; but I might revise my view today. I also read on the boat *After Strange Gods* by T. S. Eliot which I thought artificial and snobbish and devoid of any real insight even though I know I ought not to speak of so eminent a minor prophet in this way.

I combed Antwerp for books, but in vain. But tomorrow I go to Paris for the week-end, and I hope for victories over the monstrous regiment of

¹ *The Curse of Bigness; Miscellaneous Papers of Louis D. Brandeis* (Fraenkel, ed., 1934).

bouquinistes who will not bring down their prices even in this time of crisis. It breaks one's heart to get a catalogue which contains an unpublished letter of Voltaire all about Hume and D'Alembert and Rousseau, seven pages long. I am in favour of a state right of eminent domain in these matters. And I noticed in a sale that a collection made by Lanson of those imaginary voyages I collect so assiduously was bought by a Greek millionaire who specialises in the manufacture of date boxes. Sir, that makes for Bolshevism! He has from a scholar's energy the fruits of a lifetime's collection which he buys to have a social cachet. It will not do!

I am having an amusing time with the Lord Chancellor just now trying to prevent him putting an age-retirement for judges into his new Bill. I note with amused pleasure that some of the best work in the law is done after 75; that as a rule the younger English judges have not been the most successful; that the older judges are not a whit less radical than the young. (It isn't so with statesmen.) But it is good for Sankey to be hot and bothered.

My love and every sort of good wish.

Ever affectionately yours, H. J. L.

20.I.35

My dear Justice: At least my brother's visit to America brought me personal news of you. I was grateful for that. And I was pleased to find that he emerged therefrom with a healthy respect for all those in Washington to whom my affection is vowed.

The first week of a new term is always irritating. You are at half-cock instead of in the middle of a routine. But this week has been notable for at least one thing. A German student of mine read in my seminar a paper on Ames¹ which I thought a masterpiece. I don't know what you would have made of it, as I, curiously, have never heard your view of Ames. I am an anti, on the ground that though, clearly, he had real learning, he had no general principles by which that learning was informed. This lad, an *émigré*, took on the job in his stride, and speaking from notes, did as clear and concise a piece of demolition, as I have ever heard in a seminar. I don't expect it would have pleased Felix, to whom Ames is still a hero; but I thought it among the two or three best academic experiences I have ever had.

Otherwise it has been the usual kind of week, enlivened only by a political meeting at Canterbury in which I had the unusual experience of having the Dean for my chairman. He was so kind about me in his opening remarks that I told him it only remained for me to speak with the

¹ James Barr Ames (1846-1910), legal historian and Dean of the Harvard Law School, 1895-1910.

archbishop in the chair for my critics to detect the sprouting of my wings. And I went to dinner with Sankey to hear the long tale of his woes. Lawyers are bad people who don't show an appropriate interest in law reform. I told him to introduce his reforms first and consult the profession afterwards. And it was amusing to hear his account, for it showed that there are just the same evils at our Bar as in yours only that we manage to gloss them over with a subtlety from which you are (wisely or unwisely) wholly free. I think Sankey not wholly happy; and I should guess that he finds his seat in the cabinet less and less satisfactory. It is his own fault; for he should have had the courage to resign when the P.M. began to side-track his activities.

In the way of reading I have some strong recommendations. First of all, Vinogradov, *The Black Consul*. I re-read it (a great compliment to a modern novel) and except for *Les dieux ont soif* I think it conveys the atmosphere of a revolution as hardly anything I have ever read. Then a Trollope I did not even know by name called *Ayala's Angel* which I think is entitled to go among his best — a heroine whom you are bound to like and a hero whom you know you would have cut out any day you happened along; what more can you ask for in a novel? Then a *History of the French Commune* by Laronze which is full of new stuff and immensely exciting. Lastly an excellent book on Rousseau by one Hendel of McGill — a little long but full of good things well said. I have also been helping a friend to find aphorisms for a collection he is making. He sent me what he had from J. S. Mill and asked me for additions. I set out on a tour of the collected essays and found some which pleased me immensely. "As often," wrote Mill, "as a study is cultivated by narrow minds, they will draw from it narrow conclusions." And isn't this admirable, especially in politics, "The gratitude of men is for things unusual and unexpected"; and this "when Society requires to be rebuilt, there is no use in attempting to rebuild it on the old plan"? I found that I gathered some six folio pages of this kind all with *aperçus* admirably phrased, and some as striking as any in the usual anthologies. The best, in some ways, was tucked away in the *Representative Government*. "Let a person have nothing to do for his country and he will not care for it." I would like to give lectures on that to the zealots for dictatorship who are so fashionable just now. The last thing I read (finished in bed this morning) was *Ecclesiastes* which I incline to think among the three or four supreme prose poems in the world. I wish you would reread it and tell me what you think.

I haven't bought a book this week, but I have bought a drawing. A dealer in Bond Street has started the instalment system. I was attracted by his advertisement and looked in. I bought a drawing for twenty pounds of a line of troops returning from battle which is superb. Your own limbs

ache with the men's fatigue. It is by Nevin's son, and the whole of modern war is in it, unspoken courage, dull hardship stoically endured, the inarticulate emotions of men to whom words are difficult, the sense of relief that there is an intermission to danger. I wish you could see it, for all the history of 1914 is there. And at three pounds a month I feel rich and the lordly patron — pleasant feelings indeed. I think the idea an admirable one, for it is the first time I have ever ventured into these pastures or felt able to do so within the strict confines of an academic purse.

One other tale I must tell. A colleague of mine was speaking with some sharpness of Ramsay MacDonald's new passion for the rich which expresses itself especially in a friendship for Lord Londonderry, "Ah!" he said, "MacDonald has still to learn that you cannot sing the Internationale to the Londonderry air." I wish I had said that.

My love to you as always.

Ever affectionately yours, H. J. L.

29.I.35

My dear Justice: It was good to have news of you from your young man.¹ I hope he will not mind every few weeks sending me a word. I value it greatly.

I have had a busy week. A visit to Swansea, where I had to make a speech. A mass of committee meetings, all of them necessary, but (I think) most of them insignificant. And students! On the average my secretary tells me that I interview fifteen each day and the variety of need, from a simple bibliography to a request for a subject for a book is a grim business. Add to that lectures, and the need to get some real work done, and I think on the whole I am entitled to my holiday in America.

I had one meeting last week that would have amused you. In the public libraries of the borough I am having special rooms constructed as special reading rooms for children. I put forward my estimate which was fiercely attacked by the opposition. A bluff real estate deal [*sic*] explained that he must oppose it as he thought separate rooms for children wanton extravagance. I pointed out that this was now standard library practice: 26 out of 28 London boroughs had them already. Then a gallant rear-admiral said that he observed from the figures that I proposed to spend three thousand pounds on rebuilding and six hundred pounds on equipment. This was an unpardonable waste of the ratepayers' money. He must, in his conscience, make his protest against it. I thereupon interjected that if the gallant admiral would be so kind as to refer to the

¹James Henry Rowe, Jr., had come to Holmes as his secretary in October 1934.

estimate again I thought he would agree that the three thousand and the six hundred to which he referred were square feet and not pounds. After that my estimate (which was in fact for four hundred pounds) went through without any further criticism!

In the way of reading one or two things are worth recording. A (to me) unknown P. G. Wodehouse called *Uneasy Money* which I thought in the classic tradition. A very good and very short book called *Morals and Politics* by E. F. Carritt which puts the general problem with point and acuteness. A symposium called *The Meaning of Marx* edited by Sidney Hook which contains a brilliant essay by him for most of which I would go bail and one by Morris Cohen upon which I would be prepared to attack him for very nearly every sentence.² Then a quite marvellous attack on Russia by one of these economists whose writings are really an account of the mental limitations of the expert.³ He defines economics as the alternative choice between scarce means to achieve maximum satisfaction. He seeks to explain marginal utility (he is a German). The English workman, he says, with an air intended to show you what a finely realistic observer he is, gladly gives up his third or fourth glass of beer to buy himself a frock coat or an evening dress for his wife. I suppose there are still people who have inherited a frock coat from their Nonconformist grandfathers, but they must be marvellously few. And the book is introduced by my eminent colleague Hayek (of whom Keynes admirably said that he has the most distinguished muddlehead in Europe) with a preface explaining that the great value of the book is its author's special knowledge of the habits of the working class! Oh God, oh Montreal! I don't wonder that the public does not take the economists very seriously. For lectures I must add that I have re-read Rousseau's *Confessions*, once again with infinite admiration for its art and its general truthfulness. With all his frailties he was a supreme artist. The description of meeting the girls in the cherry-orchard is surely among the dozen most exquisite idylls in literature.

I have bought nothing, though there have been one or two things in catalogues that have made my mouth water. A set of the U.S. Supreme Court Reports for sixty pounds; it seemed almost a crime to let it go, and bound in half pigskin at that. It belonged to McCardie, J. who died 18 months ago. I can't quite imagine why he had it as except for references to *Ex parte Milligan* I can't find that he ever quoted them. I rejoiced to see that my Bentham has now gone up to thirty pounds; and Fitz Herbert's *Graunde Abridgement* in the 1565 edition has gone up to

² "Why I Am Not a Communist," *The Meaning of Marx* (Hook, ed., 1934), 91.

³ Boris Davidovich Brutskus, *Economic Planning in Soviet Russia* (with a Foreword by F. A. Hayek, 1935).

fifteen. Isn't there an especial satisfaction when the books you have unjustifiably bought repay you in that way?

I end with a story that is a real climax. A Japanese some years ago asked me to write a preface to a book he had written. Weakly I did. Last month he re-appeared with a new book and said that his publisher had suggested I write a preface to that. I declined and told him that he ought now that he had published a book to stand on his own feet and that he should tell his publisher so from me. Today I met the publisher who told me that the Jap had said that "Mr. Laski would not write the preface as he felt strongly that I should float on my own bladder." Isn't that really superb.

We all send our love. As an incident I add that I thought Cardozo had much the best of the argument in the oil case.⁴

Ever affectionately yours, H. J. L.

17.II.35

My dear Justice: I have been over half England since I last wrote to you, speaking at Bristol, Swansea, Burnley and Durham for a cause you would not bless to audiences you would have found exciting. Imagine near Durham speaking to 300 Dalesmen who come in from the hills with their storm-lanterns and their sheep-dogs and sit there grim and gnarled asking one questions for two hours with never even a grunt to display their feelings. Or the old man at Bristol who asked me what I thought of Carlyle. I expressed a qualified admiration. He struck his stick on the ground and exclaimed with a vigour I cannot convey, "Sir, he teaches a man the glory of self-respect."

In the way of reading I have some recommendations. If you have not read it, I think you would enjoy *The Roman Hat Mystery* by Ellery Queen; at least it baffled me completely as neither of my candidates was finally arrested. Then a superb little book *Ethics and Politics* by E. F. Carritt (Oxford) which analyses the main theories of their relation from Hobbes onwards with a clarity and skill which leave me envious. And I have had joy beyond words in the three volumes of Diderot's letters to Sophie Volland. There is one of the half-dozen most attractive human beings in the record — all the qualities one wants from hatred of unnecessary pain, through fire in the belly, to that penumbra of decent

⁴ *Panama Refining Co. v. Ryan*, 293 U.S. 388 (Jan. 7, 1935). A majority of the Court, over the dissent of Cardozo, J., determined that there was an excessive delegation of power in those sections of the National Industrial Recovery Act under which the President had prohibited the transportation in interstate and foreign commerce of petroleum products produced in excess of state quotas.

vulgarity that is a necessary part of the whole man. His descriptions of the dinners at Holbach's are simply enchanting. I have also read with profit, not unmixed with pain, Commons' *Institutional Economics*. His own theory seems to me bunk; but his accounts of Locke, Turgot, and Adam Smith do, I think, throw genuinely new light on the ideas of each by the manner of his approach to them. Finally I beg to recommend a novel about contemporary Italy called *Fontamara* by one Silone which is superb. The ability to make a farcical comedy the vehicle of simply first-rate political satire is rare indeed; and this comes off with a vigour and gusto that will delight you. Please do not fail to have it as your accompaniment to solitaire.

I must tell you, too, of a night in Oxford. Imagine the high table at Christ Church in which the guest is flanked by the professor of pastoral theology. . . . The guest asks what exactly pastoral theology is: before he can reply, a young don across the table defines it as "the study of foot and mouth disease in the clergy." Then a discussion of the government and the queer relations of MacDonald to the Tories. "Ah," said my young don, "he cannot go on trying to sing the Red Flag to the tune of the Londonderry Air." A little later the talk turned to the sins of a youth in the college named Price who, being drunk in charge of a car, when charged at the police station agreed that he was drunk and with great vehemence offered to fight any constable who thought him sober. "In fact," said my young don, "Price ceased to pay to virtue the homage of hypocrisy." And all this in one evening from a lad whose specialty is vector analysis. I did not previously believe the young mathematician had so much blood in him.

In the way of book-hunting I have not much to record. I found some nice sixteenth century criticisms of Machiavelli which I was glad to have, and a small collection of pamphlets on the law of libel in the 18th century — the issues which led up to Fox's libel act. But at present the depression has led to a lull in the book world and apart from the obvious rarities things are not being bought and sold. All this reminds me of a pleasant book I do not think I have ever mentioned to you — *Confessions of a Bankrupt Bookseller*. It is a good picture of an attractive type which I enjoyed greatly. After all a good bookseller, even though he only pays five shillings in the pound, is pretty nearly the noblest work of God.

We are at the moment in one of those minor crises in politics which always emerge when the sands of a government are beginning to run out. I don't think it means a general election just yet. But it is most interesting to see the men who hope for a return begin to burnish their armour and prepare the ground for fighting alliances. Eustace Percy for instance is beginning to announce his claims and it is good fun to watch his anxiety to be in the light sufficiently to prevent the danger of his

being overlooked once more.¹ But he is not alone. Politicians who have been silent ever since 1931 begin to whisper that they have done enough to warrant consideration. I can't help feeling that exhibitionism is an integral part of the politician's equipment. That and the power to improvise sincerely are the essence of the breed. Lord Horder, the physician, said, I thought, a good thing the other day when he remarked that the politician who succeeds is the man who convinces himself by his own perorations.

I have booked my passage on March 20th — so I shall be in Washington sometime in the first part of April. I have promised to be in Illinois on April 10–11 and in New York on Mondays. But I am going to leave 3 or 4 days for a sight of the New Deal and I shall assume that I may come along to see you on each of them.²

Our love to you as always. I do not need to tell you that the book you will get next week brings you all and more of the old affection.

Yours devotedly, Harold J. Laski

¹ When MacDonald resigned in June 1935, Lord Eustace Percy became Minister Without Portfolio in Baldwin's Cabinet.

² Holmes died on March 6, 1935.

Biographical Appendix

BIOGRAPHICAL APPENDIX

Adams, Brooks (1848–1927), descendant of Presidents. His forebodings of doom found justification in a cyclical and cynical interpretation of history which he formulated in *The Law of Civilization and Decay* (1895). He was as distinctively a Bostonian and as uncompromisingly an Adams as his better-known brother, Henry, whom he idolized — in that devotion rising above the rebellious skepticism which sharpened his judgment of his own world and its aspirations.

Alcott, Amos Bronson (1799–1888), Concord visionary, whose transcendentalism, being as much a way of life as a philosophy, led him into a series of high-minded and unsuccessful educational experiments. His best-known failure was the community of Fruitlands; his closest association with success, his daughter's *Little Women*.

Alexander, Samuel (1859–1938), beloved Professor of Philosophy at Manchester from 1893 to 1924. Save for his one large work, *Space, Time, and Deity* (2 vols., 1920), Alexander's distinguished contributions to philosophy were principally in essays and lectures. His metaphysical affiliations were with Spinoza, with the realists and theists; in his ethics he was an evolutionist, and in aesthetics he was greatly concerned with the psychology of artistry.

Althusius, Johannes (1557–1638), Calvinist author of *Politica methodica digesta atque exemplis sacris et pro-*

fanis illustrata (1603). His answer to Bodin's thesis that sovereignty is the absolute and indivisible prerogative of the state emphasized the multiplicity of groups in all societies, the natural rights of those groups and of individuals, and the contractual origins and limitations of governmental power.

Alverstone, Viscount. *See* Webster, Richard Everard.

Ames, James Barr (1846–1910), beloved Dean and Professor of the Harvard Law School. As teacher he made of the case method of instruction a success which its founder, Langdell, never achieved. As scholar he is best known for his numerous essays on English legal history and his many case-books on various branches of the law.

Amos, Sir Maurice Sheldon (1872–1940). Following his years of judicial service in Egypt, Amos became a frequent adviser to the British government in matters of foreign law and international affairs. After the publication of his principal work, *The English Constitution* (1930), he became Quain Professor of Comparative Law at University College, London.

Anson, Sir William (1843–1914). While serving as Warden of All Souls College, Oxford, with considerable success, Anson endeavored through writing and teaching to make the study of law an educational and not simply a professional enterprise. His

chief published works, *The Principles of the English Law of Contract* (1879) and *The Law and Custom of the Constitution* (1886, 1892), contributed substantially to that purpose. Neither was a book of distinguished originality yet each has proved itself a lucid aid to legal education.

Argenson, René Louis, Marquis d' (1694-1757), for years in the service of Louis XV. His association with Voltaire and the *philosophes* converted him to the cause of reform and the dream of a European Republic. In retirement during the last ten years of his life, he revised his unpublished writings. The most important of these works, published posthumously, were *Considérations sur le gouvernement de la France* (1764) and *Mémoires* (5 vols., 1857 et seq.).

Arnauld, Antoine (1612-1694), member of a distinguished family of lawyers. Antoine, known as *le grand Arnauld*, was a frequent victim of persecution but was a prolific pamphleteer in the Jansenist cause and a vigorous foe of the Jesuits and Calvinists. His energy was expressed in his response to a friend's suggestion that it was time to go to bed: "*Vous reposer? Eh! n'aurez-vous pas pour cela l'éternité entière?*"

Astor, Nancy (1879-), Viscountess. American zest, Virginian charm, and marriage to Lord Astor facilitated an energetic career as suffragette, conservative member of Parliament, explosive friend of the great, and intemperate enemy of intemperance. With humor and pride she has told her own story under the somewhat possessive title *My Two Countries* (1923).

Atkin, James Richard (1867-1944), Baron Atkin; Judge of the High Court, 1913-1919; Lord Justice of Appeal, 1919-1928; Lord of Appeal in Ordinary, 1928-1944. Of his many

opinions none is better known than that in which, writing of snails in bottles, he broadened the scope of the manufacturer's liability for negligence (*Donoghue v. Stevenson* [1932] A.C. 453). In constitutional law his independent courage led him to dissent in *Liveridge v. Anderson* [1942] A.C. 206, wherein he urged, as a matter of statutory interpretation and constitutional policy, that the Home Secretary's determination that there was reasonable cause to detain a suspect, was reviewable by the judiciary. Laski wrote of Lord Atkin's dissent in 22 *The New Statesman* (N.S.) 421 (Nov. 15, 1941). Atkin's ardent desire to bring about reforms in legal education and to have law taught as a branch of the humanities was shown with some frequency while he was Chairman of the Council on Legal Education from 1919 to 1934 and in his work as Chairman of the Lord Chancellor's Committee on Legal Education in 1934.

Atkinson, John (1844-1932), Baron Atkinson. As Irish barrister, Attorney General of Ireland, and member of parliament from North Londonderry he played an important part in the legal and political events of the last decade of the nineteenth century. Becoming Lord of Appeal in Ordinary in 1905 he remained on the bench until 1928, when he was succeeded by Lord Atkin.

Aulard, Alphonse (1849-1928), founder of the *Société de l'histoire de la Révolution* and masterful editor of forgotten records of the Revolution. His own interpretations of the Revolution, though frankly partisan, were so infused with enthusiasm and so firmly grounded in scholarship that they commenced a new era in the historiography of the Revolution. His greatest single work was the *Histoire politique de la Révolution française* (1901). His passionate disagreement

with Taine's despairing interpretation of the Revolution was most fully expressed in his *Taine: Historien de la Révolution française* (1907).

Austin, John (1790-1859), follower of Bentham and father of the modern school of analytical jurisprudence. In *The Province of Jurisprudence Determined* (1832) he sought to define the boundaries between "law strictly so-called" and "law by analogy." By his process of definition he determined that his province of jurisprudence should be that of "law strictly so-called," wherein every positive law may be seen to be a direct or circuitous command of a sovereign. This discarding of morality and the law of nature was, needless to say, a repudiation which critics of the analytical school have been unwilling to accept.

Babeuf, François (1760-1797), agitator and socialist critic of the Revolution. His violent protests against inequality during the Directory led to his arrest, condemnation, and execution for having conspired to bring about an armed rising. His greatest influence was not on his own time but on the doctrines which inspired the revolutions of 1848 and 1871.

Bagehot, Walter (1826-1877), economist, whose training in the law and intimate relations with leaders in political and intellectual affairs gave to his writing in political science (*The English Constitution* and *Physics and Politics*) and economics (*Lombard Street*) an effective vitality. Admiring the deferential strain in British character and seeing the social value of dullness as contrasted with originality, he was no radical in his politics and was an ardent and able spokesman for that political liberalism and institutional conservatism which marked the age of Victoria.

Bailhache, Sir Clement Meacher (1856-1924). Both at the bar and on the High Court, to which he was nominated by Lord Haldane in 1912, his extraordinary competence was in commercial matters. The alacrity of his judgment, while notable and admirable as utilized in the field of his specialty, on occasion impeded his administration of the criminal law.

Bain, Alexander (1818-1903), Scottish logician and psychologist who, as friend and biographer of John Stuart Mill, was faithful to the utilitarian tradition in ethics and to Mill's principles of logic. He was a founder of the philosophical journal, *Mind*. His principal contributions to the intellectual history of his time were in psychology. Though he made no major additions to psychological theory, his insistence that the methods of psychology should be scientifically influenced the direction of later psychological research, particularly that of William James. It has been suggested that he was the grandfather of pragmatism.

Baldus, Petrus (1327-1406), pupil and disciple of Bartolus who followed his master in the belief that the gloss on Roman law was more important than the text itself. In political theory he gave special emphasis to the force of local custom and the obligation of the prince to respect that custom. Though willing to concede large powers to kings he considered that they were bound by their contracts with the people.

Barbier, Edmond (1689-1771), lawyer and diarist whose *Journal historique et anecdotique du règne de Louis XV* (1847-1849) records the political and other events of Paris from 1718 to 1762.

Barclay, William (1546-1608). Scottish by birth, Catholic in faith, Barclay from France defended the au-

thority of James I to exact the oath of allegiance from English Catholics. In the concept of the divine right of kings he found society's security from anarchy and royal immunity from ecclesiastical power. His principal works were *De Regno et Regale Potestate* (1600) and *De Potestate Papae* (1609).

Barker, Sir Ernest (1874–), political scientist and historian. Laski's first association with him was when Barker was Fellow and Tutor at New College, Oxford, during Laski's undergraduate days.

Bartolus of Sassoferrato (1314–1357), Professor of Law at Perugia and greatest of the Post-Glossators. His stature as commentator was such that later centuries and other nations in receiving Roman law accepted his version in preference to the *Corpus Juris*. In doing so, they received from his pen not only law but political theory as well. That theory, constructing a hierarchy of sovereignties, put the Pope above the Emperor and confined the power of kings within territorial limits.

Bayle, Pierre (1647–1706), French philosopher who turned from Calvinism to Catholicism and returned again from whence he started. His *Dictionnaire historique et critique* (1696) became the model of Diderot's *Encyclopédie* in an age of enlightenment for which Bayle might have had small sympathy. Though he rejected the all-sufficiency of reason, considered that man's nature is essentially evil, and in politics was timidly conservative, in his *Dictionnaire* he indulged an ingenious talent for irreverent paradox which was the admiration of the *philosophes* of the eighteenth century. Voltaire spoke fairly of him: "Bayle is the first of logicians and sceptics. His greatest enemies must confess that there is not a line in his works which

contains an open aspersion of Christianity; but his warmest apologists must acknowledge that there is not a page in his controversial writings which does not lead the reader to doubt, and often to scepticism." See, herein, Jurieu, Pierre.

Beck, James Montgomery (1861–1936), lawyer and politician whose service as Solicitor General of the United States in the Harding administration was followed by a career in Congress from 1927 to 1934. His most pretentious work, *The Constitution of the United States* (1922), stimulated Thomas Reed Powell's devastating sketch of constitutional pontification in 33 *New Republic* 297 (Feb. 7, 1923).

Becker, Carl (1873–1945), Professor of History at Cornell. His greatest contributions to the history of ideas were *The Declaration of Independence* (1922) and *The Heavenly City of the Eighteenth Century Philosophers* (1932).

Behrman, S. N. (1893–), American author, best known for his plays *The Second Man* (1927), *Brief Moment* (1932), and *Biography* (1933).

Bell, Gertrude Margaret Lowthian (1868–1926), traveler, renowned letter-writer, and expert on the antiquities and immediacies of the Middle East. Through scholarship and devotion she did much to interpret and direct the course of history in Mesopotamia in the years following the First World War. *The Letters of Gertrude Bell* (2 vols., 1927; Lady Bell, ed.), edited with great discretion if not excessive prudence, were published shortly after her death.

Bellarmino, Roberto (1542–1621), Jesuit Cardinal and forceful controversialist. Temperate in manner and conciliatory in form, his writings

claimed for the Pope a divine, though indirect authority over secular matters sufficient to satisfy all but the most aspiring of papal claims. His views, however, met with the disapproval of Sixtus V and Paul V. His *Tractatus de potestate summi pontificis in rebus temporalibus* (1610), was published in reply to the thesis of a fellow Catholic, William Barclay, that James I was justified, after the Gunpowder Plot, in demanding of Catholics an oath of allegiance.

Benda, Julien (1867–), novelist and essayist. His forceful criticism of Bergson and his followers was inspired by the conviction that the rational is to be preferred to the emotional and that intelligence is something more than feeling and must be recognized as thought in action. In fiction his most important work was *L'Ordination* (1912); in philosophical criticism, *Le Bergsonisme* (1912) and *La trahison des clercs* (1927).

Berenson, Bernard (1865–), American-born art critic, whose life in Italy has contributed to the distinction of his many works on the Italian painters. He has told the story of his life in art in *Sketch for a Self Portrait* (1949).

Bethell, Richard (1800–1873), Baron Westbury; sharp-tongued Chancellor who sat on the woolsack from 1861 to 1865. Contemptuous of the inferior abilities of others, and peculiarly hostile to the clergy in general and to Bishop Wilberforce in particular, he was forced to resign the chancellorship when laxities in administration for which he was technically responsible were uncovered by Parliament.

Beveridge, Albert J. (1862–1927). Following his energetic career as Senator from Indiana and leader of the Progressive Republicans, he profes-

sionalized an aptitude for history and wrote his monumental *Life of John Marshall* (4 vols., 1918–19). Thereafter he turned to the task of writing a four-volume biography of Lincoln, but died when his work was but half completed. Holmes's association with him was as a summer neighbor on the North Shore of Massachusetts.

Beveridge, Sir William (1879–), later first Baron Beveridge; economist, civil servant and, from 1919 to 1937, Director of the London School of Economics. His lifelong concern with problems of unemployment led to his most famous achievement—the Beveridge Report of 1942, in which he set forth proposals for a scheme of social insurance, a plan which in many of its essentials was adopted by the Labor Government between 1945 and 1947.

Beza, Theodore (1519–1609), Calvinist author of *De haereticis a civili magistratu puniendis* (1554) and successor to the Genevan authority of Calvin. He was as vigorous an opponent of toleration and defender of the faith (as he and Calvin saw it) as the most ardent inquisitor.

Birrell, Augustine (1850–1933), lawyer, statesman, and essayist. In public life he was a loyal supporter of Gladstone and held the presidency of the Board of Education in the Campbell-Bannerman government. As Chief Secretary for Ireland from 1907 to 1916 he followed the succession of Morley and Bryce, doing his duties charmingly but so casually that he failed entirely to foresee the Easter rebellion. His political career ended, he returned to a quiet life of letters in Chelsea. He told his own story in *Things Past Redress* (1937).

Blackburn, Colin (1813–1896), Baron Blackburn. Before his appointment as puisne Justice of the Queen's Bench

in 1859, his one distinction, and that considerable, was as author of a *Treatise on the Contract of Sale* (1845). On the Queen's Bench he proved himself a judge of such capacity that his designation as Lord of Appeal in Ordinary in 1876 met with that enthusiastic approval which was so notably lacking when he had first been chosen for judicial duties.

Blanc, Jean Joseph Louis (1813-1882), teacher and journalist whose Socialism gave predominant emphasis to the influence of competition in producing inequality and who urged that the people would secure equality only when they had made the State their instrument. Holding office in the First Revolutionary Government of 1848, he was able to see his plan of State workshops put briefly into effect. Author of *Histoire de dix ans, 1830-1840* (1841-44).

Blanqui, Louis Auguste (1805-1881), intellectual and political leader of revolutionary movements. His largest contribution to socialist theory was the concept of the proletarian dictatorship, and his principal achievement in revolutionary action the organization of armed and secret societies which played a significant part in the course of events of 1848 and 1870.

Blunden, Edmund (1896-), critic, poet, and scholar. He was Fellow and Tutor in English Literature at Merton College, Oxford, from 1931 to 1943.

Boileau, Nicolas (1636-1711), poet, critic, and literary dictator of the age of Louis XIV who defended the classical tradition against its Cartesian critics. His *L'Art poétique* (1674) on the theory of verse, translated by Sir William Soame with the aid of Dryden, and his *Satires* (1666) had such a large influence on English letters

that Pope was known to his contemporaries as "the English Boileau."

Boissier, Gaston (1823-1908), Latinist, critic, and archaeologist who was Sainte-Beuve's successor at the College of France. His principal historical works were *La religion romaine d'Auguste aux Antonins* (2 vols., 1874) and *La fin du paganisme* (1891). In literary criticism his most important volumes were *Cicéron et ses amis* (1865) and *Madame de Sévigné* (1887).

Bolingbroke, Viscount. See St. John, Henry.

Bonald, Vicomte de (1754-1840), described by Emile Faguet as the last of the scholastics. His faith in deductive reason was coupled with unbending hostility to Rousseau and all aspects of the Age of Reason, utter distrust of the traditions of the Revolution, and consuming confidence that the salvation of France was to be found in a restoration of the *ancien régime*, and of mankind in the authority of the Papacy. The lifeblood of history, he believed, was to be found in books and ideas, not in men and their passions. Societies were more important centers of life and thought than individuals. Laski's most complete discussion of Bonald is in Chapter II of his *Authority in the Modern State* (1919).

Bosanquet, Bernard (1848-1923), philosopher and political theorist who gave a Hegelian interpretation to Rousseau's "general will." Through metaphysical inquiry he discovered the moral person of the state and assigned to it an unlimited authority by which it compelled the individual to realize his freedom. In coloring the supremacy of a state's authority with the virtue of moral truth he believed that he had not taken from the individual liberties which he might legiti-

mately seek to retain. His most important work in political theory was *The Philosophical Theory of the State* (1899).

Bossuet, Jacques Bénigne (1627–1704), Catholic theologian who believed that the drift of his age toward rationalism must be stopped by restoring the philosophical credit of Providence and of miracle, and by the reconversion of Protestants. In his political writing, while denying to Louis XIV the special grace of arbitrary power and to the people any natural rights, he acknowledged that the King's authority was as absolute as were his rights divine. As theological controversialist he succeeded in effecting the Papal condemnation of Fénelon's quietism. His fame as preacher rests principally on the magniloquence of his funeral orations.

Bourdaloue, Louis (1632–1704), Jesuit preacher whose reputation for eloquence was second only to that of Bossuet. His genius being more that of a moralist than of a theologian, he came somewhat closer to success than did Bossuet in achieving the difficult task of bringing morality to the court of Louis XIV.

Bowen, Charles (1835–1894), Baron Bowen. At the bar and on the bench he retained the graceful literary talent which marked his early contributions to the *Saturday Review*. His subtle and sensitive genius was largely wasted on the jurymen of the Queen's Bench, on which he sat from 1879 to 1882, but refreshed and vivified the Court of Appeal, to which he was advanced in 1882. The opinions which perhaps most fully reveal the quality of his mind and of his style were those which he delivered in *Mogul Steamship Company v. McGregor*, 23 Q.B.D. 598 (1889) and *Maxim Nordenfeldt Gas and Ammunition Co. v. Nordenfeldt* [1893] Ch. 630.

Bradlaugh, Charles (1833–1891), self-made atheist and missionary of doubt who saw a natural alliance between political republicanism and theological radicalism. He succeeded in his effort to force a respectable society to make itself ridiculous by prosecuting and persecuting him. Elected to Parliament in 1880 he finally prevailed, five years later, in his effort to be seated despite his atheism.

Bradley, Francis Herbert (1846–1924), principal figure in the English philosophical movement away from empiricism and utilitarianism towards an idealism largely Kantian and Hegelian in inspiration. In metaphysics his inquiries led him to the Absolute, a superrelational reality beyond the reach of experience yet imperfectly manifested in the appearance with which experience is concerned. His metaphysics and his distrust of an optimistic empiricism led him in political theory to the belief that the individual must recognize his social station and find his freedom in participation in the life of the moral organism known as the state.

Brailsford, H. N. (1873–), distinguished journalist whose contributions to the *Manchester Guardian*, *The Nation*, *The New Republic*, and other English and American periodicals have given many generations of readers an informed understanding of the liberal point of view towards political affairs. H. W. Nevins has written of Brailsford's qualities as journalist in his *Fire of Life* (1935), *passim*.

Bramwell, George William Wilshire (1808–1892), Baron Bramwell. He has been characterized as one of "the strongest judges" to sit on a British Court. His years of most distinguished service were in the Court of Exchequer. Before going on the Bench he had played an important part on a num-

ber of Commissions in changing the law of England; as judge, however, he never sought to change the law but merely to clarify its principles and enforce it as so clarified.

Brandeis, Louis Dembitz (1856-1941). His service on the bench of the Supreme Court of the United States from 1916 to 1939 followed a distinguished, successful, and vigorous career at the Boston bar. The high morality of his mind and his deep concern that the state's efforts to improve the lot of man should not be frustrated by constitutional abstractions made him an influence of profound importance. Frequently associated in dissent from the views of a majority of their brethren, Holmes and Brandeis differed greatly in their temperaments, their political convictions, and their basic interests, yet were devoted friends and allies in their search for truth.

Brewer, David Josiah (1837-1910). A judicial career in the State of Kansas covering twenty-five years preceded his service on the Supreme Court of the United States, from 1889 to 1910. The nephew of Mr. Justice Stephen A. Field, he was heir to and advocate of his uncle's vigorous conservatism, a conservatism which made the constitution a binding code of *laissez-faire* principle and led him to announce from the bench that "the paternal theory of government is to me odious," *Budd v. New York*, 143 U.S. 517, 551 (1892), and to consider a progressive rate of taxation unconstitutional, *Knowlton v. Moore*, 178 U.S. 41, 110 (1900).

Brissaud, Jean-Baptiste (1854-1904), Professor of Law at Toulouse. Brissaud's greatest work of historical scholarship was *Cours d'histoire générale du droit français* (1904). His philosophic inclinations were utilita-

rian and scientific, and his concern as legal historian was with the institutions which surround and shape the law, rather than with its content. His perspective was European, not merely French, and he did much to further the comparative method in the study of legal history.

Brunetière, Ferdinand (1849-1906), militant critic, historian of ideas in French literature, and champion of the classical tradition. Brunetière discovered the sources of modern pollution in the Enlightenment, and made it his special responsibility to assault its progeny, the scientific naturalism of Zola and Anatole France. His ultimate conversion to Catholicism concluded a lifelong search for the security of a disciplined tradition. His greatest work was *Études critiques sur l'histoire de la littérature française* (8 vols., 1880-1907). Laski included a telling summary of Brunetière's traditionalism in *Authority in the Modern State* (1919) 171 *et seq.*

Brunner, Heinrich (1840-1915), historian of the legal institutions of the Franks. As teacher and scholar at Berlin he had international influence on the methods of research in legal history. His largest single contribution to the history of English law was his tracing of the history of trial by jury to its Frankish origins.

Buchanan, George (1506-1562). Scottish by birth, he was so French in the humanistic bias of his thought and mood that he has been described as the Scots Rabelais. His principal work, *De jure regni apud Scotos* (1578), was a dialogue in which, over somewhat flabby opposition, he was able to develop the thesis that royal authority is limited by a body of law made by the majority of the people, and, in doing this, to justify the dethronement of Mary, Queen of Scots.

Burlingham, Charles Culp (1858–), urbane and cultivated lawyer of the New York bar whose professional career has largely been in the court of Admiralty and whose influence on public affairs has been through his wise and humorous counsel to distinguished men of affairs.

Burns, John (1858–1943). His early energies were given to militant socialism. In the London County Council he worked effectively and energetically on behalf of labor and in 1889 played a leading part in the strike of the London dockers. In the House of Commons, to which he was first elected from Battersea in 1892, he was an independent radical until his inclusion in the Liberal ministry of Campbell-Bannerman. Thereafter his radicalism noticeably diminished and his independence took the form of a refusal to join the Labour Party. His library was large, his vanity colossal.

Butler, Joseph (1692–1752), Bishop of Durham and author of *The Analogy of Religion, Natural and Revealed, to the Course and Constitution of Nature* (1733), in which the effort was made to refute the speculations of deism by showing that the limitations of the human mind make our knowledge of nature as incomplete as our knowledge of God. This effort to answer the deists and to restore the diminishing credit of revelation had even greater influence in the nineteenth century than it did in the Bishop's own day.

Bynkershoek, Cornelius van (1673–1743), Dutch judge and jurist whose *De domino maris dissertatio* (1702) became one of the classics of international law. Less philosophically inclined than Grotius, he gave larger emphasis to such positive sources of international law as custom, treaties, and Roman law than to the law of nature.

Caird, Edward (1835–1908). Successor to Jowett as Master of Balliol, he followed in the neo-Hegelian wake of T. H. Green, and in his *Critical Philosophy of Kant* (1889) and *Essays on Literature and Philosophy* (1892) made substantial contributions to the English literature of idealism.

Caird, John (1820–1898), Principal of Glasgow University, theologian, and philosopher. In his most important work, *Introduction to the Philosophy of Religion* (1880), he used a Hegelian metaphysics as a means of establishing the rationality of Christianity. He greatly influenced the thought of his more renowned brother, Edward Caird.

Cairns, Hugh McCalmont (1819–1885), first Earl Cairns. Ulsterman by birth, he became a leader of the equity bar in London and Conservative M.P. from Belfast. His "terrible lucidity" made him a formidable advocate as lawyer and politician and led him to become Solicitor General and Attorney General. In 1868 he served briefly as Lord Chancellor in the Disraeli government, returning to the woolsack in 1874 for a term which lasted for four years. Lord Bryce, though disagreeing with Cairns in politics, considered him the greatest judge of the Victorian era, if not of the nineteenth century. Another admirer has found the secret of Cairns's greatness in his capacity to balance acuteness of perception with breadth of judgment. Off the Bench, Cairns applied his professional energy and intelligence with signal success to the reform of the law, both in its procedural and its substantive aspects, and his evangelical convictions to the advancement of a gloomy version of Puritan piety.

Cardozo, Benjamin N. (1870–1938), one of the greatest of American common-law judges. He sat on the New

York Court of Appeals from 1914 to 1932, when he was named Holmes's successor on the Supreme Court of the United States by President Hoover. The sensitivity of his temperament, the delicacy of his mind, and his profound concern with the philosophy of law and the responsibility of judges were shown not only in his judicial opinions but in his extrajudicial writings, such as *The Nature of the Judicial Process* (1922) and *The Paradoxes of Legal Science* (1928).

Carey, Henry Charles (1793-1879), American publisher, journalist, and economist whose sanguine views of what individual freedom could do for American destiny led him to deny the applicability of Ricardian and Malthusian principles to American conditions. An ardent protectionist and supporter of general incorporation statutes, he secured a large following both at home and abroad. His most important works were *Past, Present, and Future* (1848) and *The Principles of Social Science* (3 vols., 1858-59).

Casaubon, Isaac (1559-1614), classical scholar whose academic career in Geneva and France was followed by a scholar's life in England, under the admiring auspices of James I. Though personally more enthusiastic in his pursuit of theological studies than in his classical research the immensity of his learning in the field of his secondary interest is the quality for which he is remembered.

Cecil, Lord Robert (1864-), first Viscount Cecil of Chelwood; conservative statesman whose greatest efforts were in the cause of world peace and the League of Nations. In 1937 he was awarded the Nobel Peace Prize.

Charmont, Joseph (1859-1922), Professor of Civil Law at Montpellier. He

considered that Duguit's principle of solidarity was an inadequate substitute for more traditional theories of justice and supported the tendency in contemporary thought which encouraged the revival of theories of natural law but, with Stammler, urged that the law of nature was of variable content. His plea for a renaissance of idealism in legal philosophy bespoke a deep concern for the rights of individuals and a fear that state power was tending towards omnipotence. His principal works were *La renaissance du droit naturel* (1910) and *Les transformations du droit civil* (1912).

Chevalley, Abel (1868-1934), French statesman and man of letters. He compiled the *Oxford French Dictionary* and was the author of studies of English literature, including *The Modern English Novel* (Redwan, tr., 1925) and *Thomas Deloney: le roman des métiers au temps de Shakespeare* (2nd ed., 1926).

Clarke, John Hessin (1857-1945). Following a career at the Ohio bar he was appointed United States District Judge for the Northern District of Ohio by Woodrow Wilson in 1914. In 1916 President Wilson elevated him to the Supreme Court of the United States to fill the vacancy resulting from the resignation of Charles Evans Hughes. Mr. Justice Clarke resigned from the Court in 1922 in order to devote his energies to the cause of world peace and the League of Nations.

Clifford, William Kingdon (1845-1879), mathematician and philosopher whose many-sided brilliance was a strong influence on his large circle of distinguished friends. His wife, Lucy Clifford, the novelist, was an intimate friend of Holmes's. Sir Frederick Pollock wrote of Clifford with affectionate admiration in his Introduction to Clifford's *Lectures and*

Essays (Pollock & Stephen, eds., 1879).

Cockburn, Sir Alexander James Edmund (1802–1880), Lord Chief Justice of England from 1859 until his death. His great capacities were more of character than of intellect and showed themselves in an energetic spirit, a vigorous memory, and a strenuous eagerness to dispose efficiently of the largest and most difficult cases to come before his Court.

Cohen, Morris Raphael (1880–1947), American philosopher whose devoted friends Holmes, Laski, and Felix Frankfurter found in him the same qualities which made him a profoundly influential teacher of many generations of students at City College, New York. His skeptical bent in metaphysics did not destroy a passionate conviction that man's ultimate reliance must be on reason or qualify the conviction that logical and mathematical relations have reality. His *Law and the Social Order* (1933) contained his essays on legal philosophy, a group of writings which had greatly influenced the thinking of American judges and lawyers. The story of his personal and intellectual life is told in his autobiography, *A Dreamer's Journey* (1949).

Cole, G. D. H. (1889–), economist and political scientist whose innumerable writings on economic and political problems have had a significant influence on socialist thought and the policies of the Labour Party in the last thirty years. Neither these works nor his teaching at Oxford prevented him from collaborating with his wife, Margaret, in the writing of a five-foot shelf of mystery stories.

Condé, Prince of (1621–1686), whose accomplishments as a general for many masters were considerable. As the friend of men of letters and of

science he is a somewhat dim figure in intellectual history. La Bruyère spoke shrewdly in saying of the Prince that "nothing is wanting to him but the minor virtues."

Coquille, Guy (1523–1603), provincial lawyer whose provincialism nourished the conviction that the local and customary law derived from the people was beyond the reach of royal prerogative. Fundamental to his legal and political philosophy was the belief that there was a delicate balance between the rights of kings and the rights of people.

Covarrubias y Leiva, Diego (1512–1577), jurist and theologian. In legal philosophy his emphasis on the traditions of the Roman law tended to encourage absolute monarchy, and his lip-service to the scholastic tradition which recognized the interest of the people did not prevent Philip II from finding in the work of Covarrubias support for his high claims.

Cujas, Jacques (1520–1590), Professor of Law at Bourges and leading figure in the humanistic revolt against Bartolus, whom he described as *verbosi in re facili, in difficili muti, in angusta diffusi*, and the Post-Glossators. Cujas demanded that legal scholarship should return to the Roman law itself, see it in its own context, and abandon the distracting task of discovering historical relationships between the law of medieval France and that of Rome.

Curzon, George Nathaniel (1859–1925), Marquess Curzon of Kedleston. His arrogant conservatism combined with political ambition made him see British imperialism as a "majestic responsibility." As Viceroy of India he took the vision seriously and exercised his responsibilities with such majestic luxury and administrative capacity that he antagonized nearly all

with whom he had dealings. Foreign Secretary in the Coalition Government of Lloyd George and in Bonar Law's cabinet, he ended his career having, in the words of Harold Nicolson, "achieved successes rather than success."

Darling, Charles John (1849-1936), first Baron Darling; Judge of the High Court from 1897 until 1923. His appointment to the bench by Lord Halsbury caused considerable indignation at the bar, which saw no reason to have confidence in the judicial capacities of a humorist whose talents had been shown more frequently in journalism than at the bar. The protestations proved not unjustified, for Darling's judicial talents were moderate. His wit and an exuberant desire to exercise it from the bench made him, however, a well-known figure in his day. His fame was increased by the fact that he presided over a number of sensational criminal cases.

Davey, Horace (1833-1907), Lord Davey. Following a notably successful career at the equity bar, he went first to the Court of Appeal and, in 1894, to the House of Lords as Lord of Appeal in Ordinary. On the Judicial Committee his extensive knowledge of foreign law made his services peculiarly useful, and in the House of Lords his opposition to the conservatism of Lord Halsbury was made strikingly effective in important cases concerning labor unions.

Davidson, Thomas (1840-1900), radiant teacher, reformer, and wandering philosopher of Scottish birth, whose personal influence on intellectual leaders of his time was notable. William James's reminiscences of Davidson are found in Knight, *Memorials of Thomas Davidson* (1907) 107-109. See also Morris Cohen, *A Dreamer's Journey* (1949), *passim*.

Demogue, René (1872-). Best known for his *Notions fondamentales du droit privé* (1911), Demogue was Professor of Civil Law and Criminal Law at Lille. Philosophically he was affiliated with the pluralistic school of which Hauriou and Duguit were the best known spokesmen. Impatient of abstractions, he demanded of positivists a larger concern with ends of law than they had previously shown; sympathetic with the efforts of rationalism he was willing to recognize the law of nature if it was seen to be an ideal rather than a positive body of law.

Dicey, Albert Venn (1835-1922), Vinerian Professor of English Law at Oxford. Through his Stephen blood and personal friendship he was closely associated with the intellectual and political leaders of his day. His notable contributions to law and jurisprudence include his *Introduction to the Study of the Law of the Constitution* (1885) and *Lectures on the Relation between Law and Public Opinion in England during the Nineteenth Century* (1905).

Dickinson, G. Lowes (1862-1932), historian, political scientist, and philosopher whose academic post at Cambridge was the center from which his humane and sensitive intelligence made its influence felt throughout the world of letters. He was intimately associated with the London School of Economics as lecturer on political science from 1896 until 1920. E. M. Forster has painted an unforgettable portrait of his friend in *Goldsworthy Lowes Dickinson* (1934).

Dilke, Sir Charles Wentworth (1843-1911), Second Baronet; politician and author, whose political loyalties embraced both radicalism and imperialism. As President of the Local Government Board from 1882 to 1885 he rendered invaluable service to

Gladstone, but his effective public career was brought to an end by a notorious divorce case in which he, without justice, was implicated.

Döllinger, Johann von (1799-1890), theologian and historian of the Roman Church whose desire for a reconciliation of a doomed Protestantism and a triumphant Catholicism led him to reject a union of the orthodoxies of his Church and resulted finally in his excommunication. His politically most important works were *Kirche und Kirchen* (1861), in which he denied that temporal power was essential to the Papacy, and *Der Pöpst und das Konzil* (1869), in which he opposed the doctrine, soon to become dogma, of Papal infallibility. Lord Acton's great tribute to Döllinger is reprinted in his *History of Freedom and Other Essays* (1907), 301-435.

Domat, Jean (1625-1696), Jansenist lawyer, whose *Lois civiles dans leur ordre naturel* (1689) provided the *Parlements* with a theory concerning the eternal principles behind all law which they used in their struggle with the King.

Duguit, Léon (1859-1928), Professor of Constitutional Law at Bordeaux. In a series of volumes on public law and jurisprudence Duguit developed the thesis that the state is beneath the law, has no claim to sovereignty, and lacks the personality attributed to it by classical legal theory. On the basis of these principles Duguit asserted that the state is legally responsible for its wrongful acts and that the stuff of law is to be found not in rights but in duties. He found that the requirement of social solidarity was the driving influence in modern law by means of which the interests of state and individual were reconciled and adjusted. In 1919 Laski and his wife published a translation of

Duguit's *Les transformations du droit public* (1913) under the title, *Law in the Modern State*. Laski's later, somewhat more critical estimate of Duguit's philosophy of law is to be found in *Modern Theories of Law* (Jennings, ed., 1933) 52.

Dunedin, Viscount. See, Murray, Andrew Graham.

Du Vergier de Hauranne, Jean (1581-1643), learned abbot of St. Cyran, advocate of church reform, and bitter critic of the Jesuits. It was in large part owing to him that Port-Royal became the center of Jansenism.

Eddington, Sir Arthur (1882-1944), Cambridge astronomer whose large contributions to a science for the experts was followed by a series of works in which its mysteries were made comprehensible to laymen. His efforts to reconcile science and religion and to justify his belief that the realm of physical science is subjective are to be found in his *Nature of the Physical World* (1928), *Science and the Unseen World* (1929), and *The Philosophy of Physical Science* (1939).

Ehrlich, Eugen (1862-1922), Professor of Roman Law at the University of Czernowitz. Ehrlich was the European leader of the modern sociological movement in jurisprudence. His most influential books were *Grundlegung der Soziologie des Rechts* (1913) and *Die juristische Logik* (1918). He found in the inner order of such social institutions as the family, the corporation, and the labor union the basic facts of law which, through the state's legislation and the decisions of courts, takes on the form of legal propositions. His emphasis upon the dichotomy between the living law, created by society, and the rules established by statute or decision for deciding lawsuits had con-

siderable influence on English and American jurisprudence and methods of legal study. Ehrlich's philosophy of law was related, of course, both in fact and in theory, to the pluralistic strain in modern political theory as represented by Hauriou in France and Laski in England. The *Grundelung* was published in translation as *Fundamental Principles of the Sociology of Law* (Moll, tr., 1936).

Einstein, Lewis (1877–), American diplomat and scholar. His most important foreign post was that of Minister to Czechoslovakia from 1921 to 1930. His principal historical works are *Tudor Ideals* (1920) and *Divided Loyalties* (1933). His intimate friendship with Holmes is recorded in their extensive unpublished correspondence.

Eldon, Lord. See Scott, John.

Esmein, Adhémar (1848–1913), French legal historian and jurist whose early works on the history of Roman and French law were followed by his *Éléments de droit constitutionnel français et comparé* (1896), in which he vigorously criticized Duguit's thesis that the state can claim neither sovereignty nor personality.

Faguet, Émile (1847–1916), critic and literary historian whose sympathies were those of a cool-headed liberal and whose insights into the character of the great writers of France made his criticism as useful to the historians of ideas as to the historians of letters. His great works of criticism were his *Histoire de la littérature française* (2 vols., 1900–1901) and *Politiques et moralistes du XIX^e siècle* (3 vols., 1890–1899). In his later years his concern was principally with the political and intellectual problems of his own day, as in his *Le libéralisme* (1902) and *L'anticléricalisme* (1906), in which he sought to defend the mid-

dle way between Traditionalism and Jacobinism.

Fénelon, François de Salignac de La Mothe (1651–1715), Archbishop of Cambrai, eloquent preacher, and tutor of the Duke of Burgundy. His most memorable literary work was his *Télémaque* (1699), written for the political education of his pupil, in which the picture of a better world revealed the shortcomings of Versailles. His fall from royal favor came when Bossuet discovered heretical tendencies in the Quietism of Madame Guyon to which Fénelon had been converted. Papal condemnation of his *Maxims of the Saints* (1697) followed, and thereafter Fénelon devoted his energies to episcopal affairs and denunciation of Jansenism.

Figgis, John Neville (1866–1919), churchman and historian. Concerned primarily with assuring churches adequate freedom, Figgis insisted, with Gierke, that each group in society has a personality of its own and an inherent liberty of growth. He had great influence on the movement in English political theory towards pluralism. His most important works were *From Gerson to Grotius* (1907) and *Churches in the Modern State* (1913).

Filmer, Sir Robert (?–1653). In his lifetime he published a series of pamphlets defending in the broadest terms the divine right of kings. His extreme views were most systematically presented in his posthumously published *Patriarcha* (1680) and have importance principally because they stimulated Locke to formulate a refutation and because they dismissed as unrealistic and fictitious the theory of the social contract.

Fisher, H. A. L. (1865–1940), Warden of New College, Oxford, historian, and statesman. In politics his most important services were rendered as

President of the Board of Education in the Lloyd George ministry from 1916 to 1922. Of his many historical works his most important was his *History of Europe* (3 vols., 1935). His principal biography was *James Bryce* (2 vols., 1927).

Fletcher Moulton. *See* Moulton, John Fletcher.

Flexner, Abraham (1866–), teacher and constructive critic of American education whose industry did much to persuade the great philanthropists to be far-sighted in their generosity, particularly to the advancement of medical education. He has told his own story in *I Remember* (1940)

Fontenelle, Bernard Le Boyer de (1657–1757), nephew of Corneille. He failed as a dramatist but had a considerable success with his *Nouveaux dialogues des morts* (1683), which combined the pessimism of the seventeenth century with the indelicacy of the eighteenth. Later, turning with enthusiasm to science, he wrote his most popular work, *Les entretiens sur la pluralité des mondes* (1686). His spirit was stubbornly that of a rationalist who distrusted all tradition. In poetry his chief work was *Poésies pastorales* (1688). Of all his writings the most distinguished were his *éloges* of deceased Academicians.

Fourier, Charles (1772–1837), utopian rationalist who drew blueprints for a decent society but in doing so overlooked the fact that the individual might find no greater happiness within a phalanx of sixteen hundred people, each fulfilling his natural duties, than in the clumsy world which much inertia and considerable energy have unscientifically and wastefully established.

Frank, Jerome N. (1889–). He was appointed to the bench of the United States Court of Appeals for the

Second Circuit in 1941. His previous career had been at the Bars of Chicago and New York and in important Federal posts under Franklin D. Roosevelt. His most provocative book, *Law and the Modern Mind* (1930), was an effort to formulate a "realistic" jurisprudence and has frequently been referred to by judges and lawyers, nowhere more regularly than in opinions delivered from the bench of the Court of Appeals of the Second Circuit and in the lively writings of one of its judges.

Fraser, Sir Hugh (1860–1927), practitioner, teacher, and judge. Prior to his appointment to the King's Bench Division of the High Court in 1924, he had been Lecturer in equity to the Incorporated Law Society and Reader in Common Law to the Inns of Court. His most important treatises were *The Law of Torts* (1888) and *The Law of Libel and Slander* (1893).

Freeman, Edward Augustus (1823–1892), the first English historian to write fully of the political history of the Norman Conquest. Despite a zealous tendency to find his own enthusiasm for political liberty confirmed in an Anglo-Norman past, his *History of the Norman Conquest* (1867–79) was a work of permanent importance. He was successor to Bishop Stubbs as Regius Professor of Modern History at Oxford.

Fréron, Élie (1719–1776), critic and journalist, whose ruling passion was enmity towards Voltaire. He used the pages of his *l'Année littéraire* to attack the Encyclopedists with defamatory zest and notably small success. His son, Stanislas, became an ardent revolutionist, a principal figure of the *jeunesse dorée*, and leader of the Thermidorian reaction.

Fustel de Coulanges, Numa Denis (1830–1889), whose earliest distinc-

tion was achieved as historian of antiquity in his *La cité antique* (1864). Later his interest turned to the medieval period and, seeking to follow a strictly Cartesian method in historiography, he gave his life to writing and revising his *Histoire des institutions politiques de l'ancienne France*. Its result was the conviction that Germanic contributions to the institutions of medieval Europe had been grossly exaggerated.

Garvin, J. L. (1868-1947), thunderous editor of the London *Observer* and a forceful influence on British conservatism. His achievements, outside journalism, were principally those of writing the official biography of Joseph Chamberlain and editing the fourteenth edition of the *Encyclopaedia Britannica*.

Gary, Elbert H. (1846-1927), whose early successes at the bar and undistinguished services on a county court in Illinois gave him the proud title of "Judge." His early career, however, has been forgotten in the richer glories of his subsequent service as Chairman of the Board and moving spirit of the United States Steel Corporation. His sumptuous dinners for competitors took some of the sting from competition, and for years his ruthless efforts to defeat unionization met with tragic success.

Gentz, Friedrich von (1764-1832). Prussian by birth, his earliest enthusiasm was for English institutions, his earliest hatred was for France and its revolution. Too liberal for preferment in Prussia he transferred his allegiance to Austria and forgot his first principles to become the faithful henchman of Metternich and a considerable force in European politics. His effective pen revealed its greatest talent in *Über den Ursprung und Charakter des Krieges*

gegen die französische Revolution (1801).

Geny, François (1861-), author of *Méthode d'interprétation et sources en droit privé positif* (1899) and *Science et technique en droit privé positif* (4 vols., 1913-24). A realist to some and a neoscholastic to others, Geny attacked the assumption that logic was a sufficient instrument of interpreting the code, insisted that the solution of legal questions requires "free scientific research," and urged that the creative responsibility of judges necessitates frequent reference to the law of nature and to standards of justice and utility.

Gerson, John (1363-1429), Chancellor of the University of Paris whose intellectual and political leadership of the Conciliar movement produced the decree of the Council of Constance — "probably the most revolutionary official document in the history of the world." Gerson's effort to introduce the principles of a limited monarchy into church government failed in its immediate objective, but so effectively preserved and freshened constitutional traditions that his work is as significant a chapter in the history of political thought as it is in that of church government. See Figgis, *Studies of Political Thought from Gerson to Grocius* (1907), Lecture II.

Gierke, Otto von (1844-1921). His great concept of *Genossenschaft*, as a Germanic principle of coöperative association, was at the foundation of his theory that the corporate body is not, as the Roman law considered it to be, a *persona ficta* but a real group person, created not by the state but by social action. Made familiar to English and American scholars by Maitland, Gierke had great influence on pluralistic theories of the state, though those who admired the depth of his scholarship and the massiveness of his

Genossenschafts theorie did not accept his ultimately Hegelian view that all groups in a society are subordinate to the will of the state.

Giffard, Hardinge Stanley (1823–1921), first Earl of Halsbury. A pugnacious Tory among conservatives, Halsbury, between 1885 and 1905, was thrice Lord Chancellor. His most famous judgments were, perhaps, those in *Quinn v. Leatham* and the case of the Free Church of Scotland.

Girard, Paul Frédéric (1852–1926), Professor of Law at Paris. He was a great Romanist who did much to encourage the study of Roman law in France and to introduce to that study the methods of German scholarship. His most important work was his *Manuel de droit romain* (1895), one of Holmes's favorites among Continental studies of law.

Gray, John Chipman (1839–1915), Professor of Law at the Harvard Law School from 1869 to 1913. A master of the law of property and an active practitioner, Gray concerned himself, somewhat impatiently, with the larger problems of jurisprudence in his *Nature and Sources of the Law* (1909). He there insisted that all theories of sovereignty are inadequate which deny or do not recognize that judges are makers of the law and as such exercise a larger share of sovereign power than do legislators. "The law of a great nation," he said, "means the opinions of half-a-dozen old gentlemen . . ."; a proposition which played a significant part in initiating the American movement towards a so-called "realist" school of jurisprudence.

Green, John Richard (1837–1883). From the ministry Green moved to the more congenial world of history. His *Short History of the English People* (1874) was a landmark in historiography, for it was more concerned

with social history than with political events and institutional change. His Irish wife, Alice Stopford Green (1847–1929), a close friend of Holmes's, became a distinguished historian in her own right. In time, finding that her loyalties were more and more with the Irish cause, she left England, returned to Ireland, and there wrote of its history.

Green, Thomas Hill (1836–1882). Rebel against English empiricism, he taught a doubting generation that idealism in philosophy does not, of necessity, mean conservatism in politics. His political theory emphasized the dependence of the individual upon the whole and found that the ideal of freedom may be achieved only in fulfillment of the general will as expressed in the authority of the state, and, so expressed, sanctioned by the inherited tradition of morality. His most important work in political theory was *The Principles of Moral Obligation* (1888).

Greer, Frederick Arthur (1863–1945), judge of the King's Bench Division of the High Court from 1919 to 1927. He was then promoted to the Court of Appeal, where he sat until his retirement in 1938. In 1939 he was raised to the peerage as First Baron Fairfield.

Gregory, Theodore (1890–). Knighted in 1942, he was Dean of the Faculty of Economics at London University from 1927 to 1930, and has held many other academic posts. He is the author and editor of many works on economics.

Grimm, Friedrich Melchior (1723–1807). By birth a German, he became a contented Parisian and the intimate friend, for a time, of Rousseau and, for many years, of Diderot and the Encyclopedists. His principal literary achievement was as the Kiplinger of

culture. His letters to the crowned heads of Europe, who became subscribers to his shrewd gazette of intellectual news, was published after his death as *Correspondance littéraire, philosophique et critique* (6 vols., 1812). Rousseau's portrait of Grimm in his *Confessions* distorts the truth and for many years unfairly affected the judgment of posterity.

Grote, George (1794–1871), banker, philosopher, radical, and Whig M.P., who in 1843 abandoned affairs for history and published his *History of Greece* (8 vols., 1846–56). His enthusiasm for democracy, his understanding of philosophy, and his experience in affairs made his *History* one of the classics of modern historical writing and did much to make the traditions of Athenian democracy a creative force in nineteenth-century thought.

Guizot, François (1787–1874), politician and historian. His *Histoire de la révolution d'Angleterre* (2 vols., 1826–27) reflected its author's lifelong conviction that the path of rational liberalism followed by the English radicals who sought political and not social equality was preferable to the path which the Jacobins had chosen for France. His greatest work was his *Histoire de la civilisation française* (4 vols., 1830). His fault as historian was a passion for symmetry and a faith that the story of the past can be made to fit the mold of logic.

Gutteridge, Harold Cooke (1876–), for many years Professor of Law at the University of London. His most important contributions to scholarship have been in the fields of comparative and international law.

Hackett, Francis (1883–). Irish by birth and education, he came to the United States in 1901, where he drifted into journalism. He was on

the editorial board of *The New Republic* in its early years. Since 1922 he has been a free-lance writer. He has written of certain aspects of his life in *I Chose Denmark* (1940).

Halévy, Élie (1870–1937), Professor of History at the École Libre des Sciences Politiques in Paris. His principal works were in the field of English social history. *La formation du radicalisme philosophique* (3 vols., 1900–03) was a brilliant study of the Benthamite school. His uncompleted *Histoire du peuple anglais aux XIX^e siècle* (6 vols., 1900–46) covers the periods from 1815 to 1852 and 1895 to 1915.

Halsbury, Lord. See Giffard, Hardinge Stanley.

Hamilton, John Andrew (1859–1934), Viscount Sumner. Judge, successively, of the King's Bench Division and of the Court of Appeal from 1908 to 1913, he became Lord of Appeal in Ordinary in 1913. One of the great judges of his time, he will be remembered as much for the style of his opinions, salted with touches of cynicism, as for the wisdom of his judgments.

Hammond, John Lawrence (1872–1949), journalist, biographer, and historian. With his wife, Barbara Hammond (1873–), he told the tragic history of the industrial revolution in a notable trilogy, *The Village Labourer, 1760–1832* (1911), *The Town Labourer, 1760–1832* (1917), and *The Skilled Labourer, 1760–1832* (1919). In journalism his most memorable writing was for the *Manchester Guardian*, to which for many years he contributed unsigned leaders.

Hand, Augustus N. (1869–), Federal judge who sat first on the District Court in New York from 1914 to 1927 and was then advanced

to the Circuit Court of Appeals. He and his cousin Learned Hand made that Court one of the strongest, if not the strongest court in the United States.

Hand, Learned (1872–), Federal District Judge from 1909 to 1924 and Circuit Judge in the Second Circuit from 1924 to 1951. One of the great figures in American law, his special distinctions have been not dissimilar to those of Holmes, in their graceful mingling of literary gifts with a philosophical if skeptical enthusiasm.

Harcourt, Sir William George Granville Venables Vernon (1827–1904), Liberal statesman, parliamentarian, and twice Chancellor of the Exchequer in Gladstone's ministries. When Lord Rosebery's Liberal Imperialism dominated the party's policy Sir William resigned the Liberal leadership and, with Morley, stood apart in opposition.

Hardie, James Keir (1856–1915), Scottish miner who moved from liberalism to socialism and became one of the great leaders of British labor. He was largely responsible for establishing the Independent Labour Party of which he became Chairman in 1893 and for which he spoke while a vigorous member of Parliament. No man did more than Hardie to establish the political labour movement and bring it to effective maturity. Margaret Cole has written of the man and his career in her *Makers of the Labour Movement* (1948), 203 *et seq.*

Harmsworth, Alfred Charles William (1865–1922), Viscount Northcliffe. With his brother, Harold (later Lord Rothenburg), he began a phenomenally successful career in journalism in 1896 with the foundation of the *Daily Mail*, and was largely responsible for a resulting revolution in the manners, control, and power of the British press.

Harrison, Frederic (1831–1923), critic and man of letters. The Positivism of Comte became his religion and he its leading British missionary. His active pen and multifarious interests produced a series of short biographies; a historical romance, *Theophano: The Crusade of the Tenth Century* (1904); and a volume of critical essays, *Studies in Early Victorian Literature* (1895).

Hauriou, Maurice (1856–1929), Professor of Public Law at Toulouse. Mixing the preconceptions of Catholicism with the premises of pluralistic sociology, he contributed largely to the institutional theory of law which he first suggested in his *Précis de droit administratif* (1910) and more fully developed in his *Principes de droit public* (1916) and in his essay "*La théorie de l'institution et de la fondation*" (*Cahiers de la journée*, No. 4, 1925). That theory conceived of society as an aggregate of institutions of which the State was but one, lacking any legitimate claim to supremacy over other institutions.

Hazeltine, Harold Dexter (1871–), legal historian of American birth who was Downing Professor of the Laws of England at Cambridge from 1919 to 1942.

Helvétius, Claude Adrien (1715–1771), renowned host and *philosophe* whose principal hedonistic work, *De l'esprit* (1758), developed a sensationist theory of consciousness and was condemned by the Pope and burned in Paris by the public executioner. Even friends among the *philosophes* found its thesis extreme, though the source of that thesis could fairly be traced to the *Encyclopédie*.

Henderson, Arthur (1863–1935), labour leader and statesman. In his early years Henderson played a critical part in the formation of the Labour

Party, and later became Home Secretary in MacDonald's first government. His greatest concern then and thereafter was with international affairs and led to his becoming MacDonald's Foreign Secretary in 1929. When the National government was formed in 1931, Henderson joined the opposition. In 1934 he was awarded the Nobel Peace Prize.

Heusler, Andreas (1834-1921), Swiss jurist and legal historian. His most important works were a study of possession, *Die Gewere* (1873), and *Institutionen des Deutschen Privatrechts* (2 vols., 1885-86), in which the strength and persistent force of medieval German law, *vis à vis* the law of Rome, was emphasized.

Higgins, Henry Bournes (1851-1929), Justice of the High Court of Australia from 1906 to 1929. His opinions in constitutional matters were of great moment in Australia. The problems with which he was concerned on the Australian Court of Conciliation and Arbitration were of international importance and were discussed in his book *A New Province of Law and Order* (1923). Several of Laski's comments on Higgins are printed in Palmer, *Henry Bournes Higgins* (1931), 254, 273.

Hill, James J. (1838-1916), efficient organizer and voracious purchaser of railroads. The first great result of his acquisitions was the Great Northern Railway. Hill's later efforts to utilize the holding company as a means of making monopoly effective were brought to a halt by the decision of the Supreme Court (with Holmes dissenting) that the Northern Securities Company had been organized in violation of the Sherman Anti-Trust Act. Hill's program for creative capitalism was described in his *Highways of Progress* (1910).

Hill, Sir Maurice (1862-1934), Judge of the Probate, Divorce, and Admiralty Division of the High Court from 1917 until 1930. He is remembered principally for his decisions in Admiralty, which were concerned with the many and important problems of maritime law arising during the First World War.

Hirst, Francis W. (1873-), publicist and economist, long associated with the London School of Economics. His enthusiastic Liberalism is recorded in his *Early Life and Letters of John Morley* (2 vols., 1927). His recollections of his friendships and youthful association are found in his volume of reminiscences, *In the Golden Days* (1947).

Hölderlin, Friedrich (1770-1843), lyric poet and leading figure of the neo-Hellenic movement in German letters.

Holbach, Baron von (1723-1789), German-born contributor of scientific articles to the *Encyclopédie*. His most vigorous philosophical energies, in *Le système de la nature* (1770) and *Christianisme dévoilé* (1767), were devoted to attacking not only Christianity but the natural religion of Voltaire. It was not surprising, perhaps, that Voltaire described *Le système de la nature* as execrable in morality and absurd in physics.

Holland, Sir Thomas Erskine (1836-1926), Professor of International Law at Oxford from 1874 until 1910. His contributions to international law were colored, if not distorted, by patriotism, and his most successful book, *Elements of Jurisprudence* (1880), was rigorously loyal to the English traditions of the analytical school.

Horner, Sir John (1842-1927). He and his wife, Lady Horner, were the intimate friends of many of the lead-

ing figures in British political and intellectual affairs, and members of that elect circle known as "The Souls." Their daughter Katherine in 1907 married Raymond Asquith. There are frequent references to Sir John and Lady Horner in Spender and Asquith, *Life of Lord Oxford and Asquith* (2 vols., 1932) and *Richard Bendon Haldane, an Autobiography* (1929).

Hotman, François (1524–1590), Huguenot jurist and political theorist. In jurisprudence he is best known for his *L'anti-Tribonian* (1603), in which he urged the abandonment of research in the aridities of Roman law. In political theory his great work was *Franco-Gallia* (1573), in which a patriotic interpretation of constitutional history supported the conviction that royal power must be subjected to limitations. Laski discussed the political theory of Hotman at some length in his Introduction to the *Vindiciae contra Tyrannos* (Laski, ed., 1924).

Hough, Charles Merrill (1858–1927), Federal judge, first on the District then on the Circuit Court in New York. His special competence was in Admiralty.

House, Edward M. (1858–1938). Carrying the Texan title of Colonel, he became the intimate adviser to Woodrow Wilson in all matters, both domestic and foreign. His greatest fame is for the part which he played in Europe in the postwar settlements after the First World War. His efforts to persuade Wilson to secure confirmation of the Versailles Treaty by compromise with the Senate failed and led to a final breach between him and the President.

Hughes, Charles Evans (1862–1948). After serving with distinction as Governor of New York, he became an Associate Justice of the Supreme Court of the United States in 1910. In 1916

he resigned from the Court to become Republican nominee for the Presidency, being defeated by a narrow margin when Wilson was reelected. In 1930 he was named Chief Justice of the United States by President Hoover, retiring in 1941. A great judge, and among the greatest of Chief Justices, his strength of character and intellect made an indelible impression on his times and on the institutions with which he was associated.

Hunt, William Morris (1824–1879). Born in Vermont, he nurtured his artistic spirit in Europe, where he became a disciple of Millet. Returning to the United States in 1855, he became the Newport teacher and friend of William and Henry James and of Holmes. His later years in Boston found him the inspiring teacher of the young and the ardent supporter of modernism in art.

Hutcheson, Francis (1694–1746), Scottish economist and philosopher, Professor of Moral Philosophy at Glasgow. In the course of his efforts to discover the moral sense in human nature he formulated a phrase — "the greatest happiness of the greatest numbers" — which was destined to have a long and varied life. As teacher and as thinker he contributed much to the minds of Adam Smith and Hume.

Inge, William Ralph (1860–), Dean of St. Paul's, 1911–1934, teacher, scholar, and essayist. In 1911 Asquith, then Prime Minister, persuaded Inge to move from his academic post as Professor of Divinity at Cambridge to the Deanship of St. Paul's Cathedral. Thereafter his pithy observations on affairs brought upon him, and perhaps earned for him the title of "the gloomy Dean." His studies of mysticism and of Plotinus were

his greatest achievements in scholarship.

Jeans, Sir James Hopwood (1877–1946), physicist, astronomer, and mathematician. His name, like Edington's, is generally known not only for his skillful efforts to make science comprehensible to laymen, but for his formulation of a philosophy which found a place for religion in a scientist's view of the universe.

Jenks, Edward (1861–1939), teacher and historian of law. His academic career began at the University of Melbourne and took him successively to Liverpool, Oxford, and London. From 1903 to 1924 he was Principal and Director of Legal Studies of the Law Society and from 1924 to 1929 held the chair of English Law at the University of London. His most useful book was *A Short History of English Law* (1912).

Jessel, Sir George (1824–1883), Master of the Rolls from 1873 until his death. Never one to underrate his own talents, he considered that there were but two men who were greater equity judges than he. His great passion for prompt efficiency and his sympathy for efforts to improve the administration of justice made his part in the carrying out of the reforms prescribed by the Judicature Acts extraordinarily valuable.

Jèze, Gaston (1869–), Professor of Law at Paris. His theory of law, as developed in *Les principes généraux du droit administratif* (1904) and numerous other works, was centered on the conviction that the law of nature is a fiction and that law, which must be distinguished from politics, is the compendium of rules which at a given time and in a given place are in fact enforced by the practitioners and the courts.

Jowett, Benjamin (1817–1893), Master of Balliol College, Oxford. His influence on his students gave him a standing in the intellectual history of his times which, if Leslie Stephen was right, was scarcely justified. His reluctance to face the ultimate problems of religion and philosophy, and his eager desire that his students should achieve a somewhat complacent success justified Stephen's critical judgment of his character, but did not prevent his becoming a great teacher and a considerable scholar. Nowhere are the complexities of his character and belief more subtly indicated than in Annan's *Leslie Stephen* (1951).

Joyce, Sir Matthew Ingle (1839–1930), Judge of the High Court from 1900 to 1915. His opinions have left no significant traces in the law of England, but he is remembered, like others, as "a just and upright judge."

Jurieu, Pierre (1637–1713), Protestant theologian, controversialist, and defender of the Huguenots. His early friendship with Bayle ended in bitter disagreement. Jurieu, believing that Bayle was the author of the anonymous *Avis important aux réfugiés sur leur prochain retour en France* (1690), in which Protestant proclivities for intolerance were vigorously attacked, replied in his *Examen d'un libelle contre la religion, contre l'état et contre la révolution d'Angleterre* (1690). Modern scholarship is generally persuaded that Bayle, while not the author of the *Avis*, could not escape responsibility for its publication. (See Tilley, *The Decline of the Age of Louis XIV*, 1929, 378–379). Jurieu's later attacks on Bayle led to Bayle's dismissal from his professorship at Rotterdam.

Jusserand, Jean Jules (1855–1932), diplomat and scholar who was French Ambassador to the United States from 1902 to 1915. His principal works of

literary criticism concerned English literature.

Kantorowicz, Hermann (1877-1940), German jurist who was forced to leave his professorship of criminal law at Kiel University in 1933. Thereafter he taught at the New School for Social Research in New York and conducted seminars at London University, Cambridge, Oxford, and Glasgow. As historian his great achievements concerned the medieval period; as student of the criminal law he is best known for his *Tat und Schuld* (1913); and in legal philosophy his name is associated with the "free-law" theory, developed in his *Rechtswissenschaft und Soziologie* (1911).

Kelsen, Hans (1881-), father of the so-called Vienna School of jurisprudence. He has been Professor of Law at Vienna and many other European universities and is presently lecturer on International Law and Jurisprudence in the Department of Political Science at the University of California. His "pure science of law" makes the analytical method omniscient in jurisprudence, insists that the legal rule is concerned with what shall be, not with what ought to be, yet makes law a normative science. The State, in Kelsen's eyes, is an expression for the unity of the legal system, and is ultimately superior to the law. The essential elements of his philosophy are found in his *Allgemeine Staatslehre* (1925).

Ker, William Paton (1855-1923), Professor of English Literature at University College, London, from 1889 to 1922, and Fellow of All Souls from 1879 until his death. Ker's learning in comparative literature was extraordinarily wide and his relatively short list of published works only suggests the breadth of scholarship of which innumerable students were the

beneficiaries. Author, *inter alia*, of *Epic and Romance* (1897) and *Collected Essays of W. P. Ker* (Whibley, ed., 1925).

Kidd, Benjamin (1858-1916), amateur sociologist and author of *Social Evolution* (1894). His effort to make religion rather than reason the key to progress antagonized the scientists as greatly as his assumption that religion is irrational did the churchmen. The general public, however, found much comfort in his facile reconciliation of science and religion.

Kohler, Josef (1849-1919), German jurist whose contributions to a Hegelian philosophy of law gave fruitful emphasis to the ethnological elements in law. His chief works in the field of jurisprudence were *Lehrbuch der Rechtsphilosophie* (1908) translated as *Philosophy of Law* (Albrecht, tr., 1914), and *Moderne Rechtsprobleme* (1913). His many contributions to legal history have been considered more intuitive than scientific.

Korkunov, Nikolay Mikhaylovich (1853-1904), Russian jurist and sociologist. He found it impossible to see the state as a juridical person, urged that law proceeds not from the public power of the state but from a collective consciousness of society, yet insisted that the state must, in order to secure the individual's liberty, control society. His most important work has been translated into English as *General Theory of Law* (Hastings, tr., 1921).

La Bruyère, Jean de (1645-1696), essayist and defender of the ancients whose barbed portraits of his contemporaries in his *Caractères* (1688) gave pain to the subjects as intense as the pleasure which it gave to the audience. Master of style, he preserved in his method and his mood

the tradition of the seventeenth century and satisfied the taste of the eighteenth.

La Fontaine, Jean de (1621-1695), poet and fabulist whose *Contes* and *Fables* have given him a firm place in the history of French literature. In the great quarrel of the ancients and moderns he joined Boileau in opposing the modernism of Charles Perrault and the *précieux* and in defending the classical tradition.

Lamennais, Félicité de (1782-1854). His earliest distinctions were achieved as leader of the Ultramontane party, when he claimed total freedom for the Roman church and insisted that toleration was blasphemy. His great works of this period were *De l'état et l'église au 18^e siècle et à l'heure actuelle* (1808) and *De l'indifférence en matière de religion* (1817-24). Bitter experience with a state which had secured the vigorous support of a Gallican hierarchy led him to believe that religious liberty could be found only in a society which saw freedom as the source of truth and the people as the custodians of liberty. The Church's answer to his plea for freedom was excommunication and disgrace for Liberal Catholicism, of which Lamennais had come, through the pages of *L'avenir*, to be the leader. Laski wrote of Lamennais in Chapter III of *Authority in the Modern State* (1919).

Lang, Andrew (1844-1912), knowledgeable journalist and man of letters whose archaeological wanderings were more those of a folklorist than of a scientist. His talent for fugitive verse grew into a fugitive competence in many fields — fiction, history, psychological research, and sport all engaged his versatile enthusiasm.

Langdell, Christopher Columbus (1826-1906), Dean of the Harvard Law School, 1870-1895. His conviction

that the life of the law was logic, not experience, led him to his great discovery — the case-method of legal education. In the hands of his successors the method contributed strength to the conviction of Holmes that the life of the law has not been logic; it has been experience.

Lanson, Gustave (1857-1934), literary historian; author of studies of *Boileau* (1892) and *Bossuet* (1891) and of *Histoire de la littérature française* (1894).

LaPradelle, Albert Geouffre de (1871-), Professor of International Law at Paris. His principal contributions to the literature of international law have been his *Les principes généraux du droit internationale* (1929) and *La justice internationale* (1933). He was the founder and director of the *Revue de droit international*.

Larnaude, Ferdinand (1853-), French jurist whose principal work, while on the faculty at Paris, was concerned with international law, the public law of France, and with comparative constitutional law.

Le Bret, Henri (1630-1708), churchman and historian, best known, perhaps, for his *Histoire de la ville de Montauban* (1668).

Lemaître, Jules (1853-1914), teacher, critic, dramatist, and politician of many, but somewhat pallid talents. In criticism, where his name is likeliest to survive, his chief works were *Les contemporains* (1886-96), *Impressions de théâtre* (1888), and *La comédie après Molière et le théâtre de Dancourt* (2nd ed., 1903).

Leroy, Maxime (1873-), sociologist and historian of French socialism. His important works include *La loi, essai sur le théorie de l'autorité dans la démocratie* (1908) and *Histoire des*

idées sociales en France (2 vols., 1946, 1949).

Lévy-Brühl, Lucien (1857-1939), ethnologist and Professor of Philosophy at the Sorbonne; author of *La philosophie d'Auguste Comte* (1900), *La mentalité primitive* (1922), and *La mythologie primitive* (1935).

L'Hôpital, Michel de (1505-1573), humanistic Chancellor of France and spokesman for Catherine de' Medici. His pleas for toleration on grounds of political necessity, if not of justice, had important documentary consequences, as in the *Colloquy of Poissy* (1561) and the *Edict of Saint-Germain* (1562), but were shortly forgotten in the Wars of Religion. His constitutional doctrine, developed in a number of important speeches, put the King beneath God and the customs of the realm, but denied to the people the right of revolution.

Lindley, Nathaniel (1828-1921), Baron Lindley; Judge of the Common Pleas, 1875-1881. He became Lord of Appeal in 1881 and Lord of Appeal in Ordinary in 1900, and retired from the Bench in 1905. His treatise, *The Law of Partnership* (1860), marked him, while at the bar, as a lawyer of considerable learning. On the Bench he excelled in industry, simplicity, and solid versatility.

Linguet, Simon (1736-1794), lawyer and pamphleteer. His *bête noire* was the Enlightenment and its ideal of political equality. His insistence that the sole object of the state was the preservation of property was the expression of a hardheaded pessimism and bespoke a concern for the economic facts of life which had some influence on Marxian socialism. The story of his two years in the Bastille as the defender of despotism was told in *Mémoires sur la Bastille* (1783). In 1794 he was guillotined for having

served and flattered the tyrants of London and Vienna.

Llewellyn, Karl N. (1893-), Professor of Law at Yale, Columbia, and Chicago. He has made many pungent contributions to the substance and the lingo of the "realistic" jurisprudence of the 1920's and 1930's. His special competence is in the field of commercial law.

Loyseau, Charles (1566-1627), French jurist and legal historian. His *Traité des seigneuries* (1608) dealt not only with the history of feudalism but with the evils of its survival. His learning with respect to Roman law and the customary law of medieval France was shown in his *Traité du déguerpissement* (1597).

Mably, Gabriel Bonnot, Abbé de (1709-1785), historian and political theorist who saw equality as the basic principle of natural law and inequality the tragic result of German institutions. His sentiment, if not his thought, became a significant factor in the socialism of the nineteenth century.

McCardie, Sir Henry Alfred (1869-1933), Judge of the King's Bench Division of the High Court from 1916 until his death. The qualities which he revealed in the trial of *O'Dwyer v. Nair*, *supra*, p. 612, reflected a conviction which colored his whole judicial career — that judges must form their own opinions on questions of policy and make them explicit in the disposition of cases. The efforts of George Lansbury to have McCardie removed from the Bench for his conduct in the *O'Dwyer* case were unsuccessful. See George Pollock, *Mr. Justice McCardie* (1934), chapter XIII.

Mack, Julian W. (1866-1943), Federal judge whose distinguished services on the District Courts and Circuit

Courts of Appeal covered the thirty years between 1911 and 1941. For many years he was an active leader of American Zionism, and in numerous public offices advanced the cause of civil liberty and the public's welfare.

McKenna, Joseph (1843-1926), Associate Justice of the Supreme Court of the United States, 1898-1926. A Catholic, he came to the Court after a political career in Congress, a Federal circuit judgeship, and a brief term as President McKinley's Attorney General. If settled conviction which may form the basis for predicting a judge's decision is a fault in the judicial temperament McKenna could escape that criticism, for his constitutional opinions, though frequently strong, were constantly variable. The occasional flowering of his conservatism into an effulgent fear of change — as when he determined that the Federal Employers' Liability Act was unconstitutional — did not prevent an independent mind from showing statesmanship.

McKenna, Reginald (1863-1943), English statesman and banker. Until 1919 his career was in politics, taking him into a number of ministries when the Liberals were in office. Thereafter he served for twenty-two years as Chairman of the Midland Bank.

MacKinnon, Sir Frank Douglas (1871-1946). Appointed to the King's Bench Division in 1924 by Lord Haldane, he was the sole appointee to the High Court during the first Labour government. In 1937 he was advanced to the Court of Appeal, where he served until his death. His recollections of the King's Bench are published in his *On Circuit* (1940), and his telling comments on the law and its judges are scattered in the pages of the *Law Quarterly Review*.

Macmillan, Hugh Pattison (1873-1952), Baron Macmillan, whose eminently successful career at the Scottish bar was followed by notable achievements in England. He became Lord Advocate of Scotland in MacDonald's first government and from 1930 to 1939 and from 1941 to 1947 was Lord of Appeal in Ordinary. He was England's first Minister of Information, from 1939 to 1940. The quality of his judicial opinions is well summarized in 63 *Law Quarterly Review* 259 (July 1947). As Chairman of the Court of the University of London from 1929 to 1943 he was intimately associated with the University's affairs.

Macnaghten, Sir Edward (1830-1913), Baron Macnaghten. Irish by birth, he became Lord of Appeal in Ordinary in 1887 and left on the law of England the indelible impression of his trenchant mind and literary gift. Perhaps the greatest, and surely the most eloquent opinion which he ever delivered was his dissent in the case of the Free Church of Scotland.

Macnaghten, Sir Malcolm (1869-), son of Lord Macnaghten. He was Judge of the King's Bench Division of the High Court from 1928 to 1947.

McReynolds, James C. (1862-1941). Appointed to the Supreme Court of the United States by Wilson in 1914, he contributed little wisdom, much conservatism, and unparalleled ill temper to the deliberations of the Court. Holmes, however, found lovable qualities behind the jagged and irascible surface.

McTaggart, J. M. E. (1866-1925), Hegelian philosopher, atheist and ardent Churchman; author, *inter alia*, of *Commentary on Hegel's Logic* (1910) and *The Nature of Existence* (1921).

Maistre, Joseph de (1753-1821), learned diplomat whose philosophical energies were devoted to establishing the primacy of Papal authority and discrediting the aspirations of the Revolution. His ultramontane zeal led him to condemn all aspects of libertarian belief and to develop a malignant hatred of Voltaire and Rousseau. His brand of Catholicism has not unfairly been described as "terrorist Christianity." His principal works were *Considérations sur la France* (1796), *Du Pape* (1821), and *De l'Eglise Gallicane* (1821-22). Laski wrote most fully of him in *The Problem of Sovereignty* (1917), chapter V.

Maitland, Frederic William (1850-1906). Trained in the law, Maitland in 1884 abandoned his career as conveyancer to become Reader in the History of English Law at Cambridge, and four years later Downing Professor. His contributions to the legal and institutional history of England were of unequaled brilliance, mingling literary style, philosophic insight, and detailed learning with such graceful ease that few of his readers have failed to fall victims to his charm. He influenced Laski's political thought principally through his Introduction to a substantial portion of Gierke's *Political Theories of the Middle Age* (1900).

Mariana, Juan de (1536-1623), Jesuit historian and political theorist. Though orthodox in belief, he was less concerned than other Jesuits of his age with problems of church and state, and directed his inquiries principally to issues of the civil commonwealth. In his *De rege et regis institutione* (1599) he defended the principle of tyrannicide and urged that when the tyrant's government destroys the welfare of the commonwealth the sole recourse, and that legitimate, is assassination. His work has suggested to many that he rec-

ognized the sovereignty of the people. He was not, however, the champion of democracy and considered that monarchy is the least evil form of government.

Marmontel, Jean François (1723-1799), dramatist and man of letters. He was a contributor to the *Encyclopédie* and in his *Contes moraux* (1761-86) and *Mémoires d'un père* (4 vols., 1804) painted charming portraits of his age.

Marsilius of Padua (c. 1275-1343), at least coauthor, and possibly author of *Defensor Pacis* (1324), a work which in its first part contained a formal treatise on government and in its second a commentary on Church and State. Frequently misinterpreted as a tract for democracy, the work had profound importance in the development of political theory. In so far as it dealt with problems of civil government it laid the foundations of the concepts inherent in the modern institutions of a limited monarchy. In its examination of the relationships between State and Church it repudiated the claim of the latter to supremacy and in fact put ultimate authority in the hands of secular government.

Martin, Kingsley (1897-), political scientist, teacher, and journalist; author of *French Liberal Thought in the Eighteenth Century* (1929). He was an intimate associate of Laski's at the London School of Economics, and since 1931 has been editor of *The New Statesman and Nation*.

Massillon, Jean-Baptiste (1663-1742), Professor of Rhetoric, and Bishop who as preacher practiced what he had taught. His eloquence put him in the tradition of his predecessors, Bossuet and Bourdaloue, and justified the description which his admirers have

given him—the last of the great preachers.

Massingham, H. W. (1860–1924), journalist and critic, who edited *The Nation* from 1907 until 1923 and in doing so made it a powerful journal of liberal opinion. His notable qualities as a journalist are described by his associates in *H.W.M.: A Selection from the Writings of H. W. Massingham* (H. J. Massingham, ed., 1926).

Masterman, C. F. G. (1874–1927), journalist and liberal politician. He successively was literary editor of *The Speaker* and of *The Nation*, and held important posts in the government before the First World War.

Mathiez, Albert (1874–1932), learned disciple of Aulard and sympathetic historian of the Revolution. In his principal work, *La révolution française* (3 vols., 1922–27), he developed a socialistic interpretation of the Revolution.

Maupeou, René (1714–1792), Chancellor of France under Louis XV. His energy in suppressing the *parlements* and establishing in their place councils of magistrates named by the King was an act of tyranny which despite that fact secured the approval of Voltaire as a reform which eliminated an hereditary magistracy.

Maurice, Frederick Denison (1805–1872), leading Anglican theologian of the nineteenth century. In 1866 he became Professor of Casuistry, Moral Theology, and Moral Philosophy at Cambridge. As the spiritual leader of the Christian Socialists he was for years involved in bitter theological controversy which distracted his talents from more critical issues. The quality of his thought in contrast with that of Leslie Stephen is brilliantly delineated in Annan, *Leslie Stephen* (1951) 179–185.

Meslier, Jean (1664–1729), apostate priest. In his lifetime he attracted the nobility and the hierarchy, and at his death left behind him his *Testament*, in which he endeavored to prove the falsity of religion in general and of Christianity in particular. The work was greatly admired by Voltaire and was probably one of the influences in forming his religious philosophy. See Moorehouse, *Voltaire and Jean Meslier* (1936).

Meyerson, Émile (1859–1933), French scientist who turned to philosophy and whose inquiries in epistemology and search for a theory of explanation resulted in his *Identité et réalité* (1908) and *De l'explication dans les sciences* (1921).

Michoud, Léon (1855–1916), French jurist who for many years was Professor of Administrative Law on the Law Faculty at Grenoble. His central concern was with problems of moral personality and the accountability of the state for the wrongs of its agents. His principal work was *La théorie de la personnalité morale et son application au droit français* (2 vols., 1906).

Milner, Alfred (1854–1925), first Viscount; statesman and Colonial administrator, who left the stamp of Balliol upon imperial affairs. The forcefulness of his administration in South Africa before, during, and after the Boer War matched his enthusiasm for Britain's imperial destiny and made him an invaluable member of Lloyd George's War Cabinet in 1916.

Molina, Luis de (1535–1600), Spanish Jesuit, whose *De justitia et jure* (1592) emphasized the limitations with which the Commonwealth traditionally has confined the powers of the monarch. An enemy of absolute power in kings, to whom he was unwilling to concede any divine rights,

he was quite willing to acknowledge the absolute power of the Pope, the vicar of Christ.

Mommsen, Theodor (1817-1903), historian of ancient Rome, active liberal politician, and Professor of Ancient History at Berlin. All of a scholar's learning and much of a journalist's enthusiasm combined to make his *Roman History* a great achievement. His later works, even more monumental in their scholarly dimensions, were a vast edition of the *Corpus inscriptionum latinarum* and his *Römischen Staatsrechts* (a part of the *Handbook of Roman Antiquities*, written with Joachim Marquardt, 1812-1882). The latter work has been described as "the greatest historical treatise on political institutions ever written."

Moore, George Edward (1873-), Cambridge philosopher, labeled a neo-realist, who discarded many of the assumptions of utilitarianism, including its hedonism, but retained the conviction that rightness of conduct is not a primary but derivative concept depending on the ultimate, though indefinable, good which it brings about. His most important work was *Principia Ethica* (1903). His influence on the young men of Cambridge in the early years of this century is described in Harrod, *The Life of John Maynard Keynes* (1951) 75 *et seq.*, and by Keynes himself in his essay "My Early Beliefs" in *Two Memoirs* (1949).

Morellet, Abbé André (1727-1819). In form a churchman, in spirit a *philosophe*, the Abbé Morellet, whose pen was of a sharpness which delighted Voltaire, was a collaborator in the *Encyclopédie* and a faithful admirer of Turgot. His economic principles were built around the conviction that trade and commerce should be free; his political views made him an enemy of the Revolution. His

Mémoires sur le XVIII^e siècle et la Révolution (2 vols., 1821) is an important source book for his times.

Morelly, *philosophe* of the eighteenth century of whose life nothing is known, save that he may have been an *abbé* and lived at Vitrey-le-François. His most important work, *Le code de la nature* (1755), described a Utopian society in which the communism decreed by the law of nature should prevail.

Moulton, John Fletcher (1844-1921), Baron Moulton. Unusual scientific aptitude contributed greatly to his successful career as patent lawyer. He was appointed to the Court of Appeal in 1906, and in 1912 became Lord of Appeal in Ordinary. His judicial career was marked by energy, independence, and pertinacious competence. He made large contributions to Britain's efforts in the First World War when he was Director of Explosive Supplies in the Ministry of Munitions.

Murray, Andrew Graham (1849-1942), first Viscount Dunedin; Scottish lawyer who, in 1913, was advanced from the post of Lord President of the Court of Session in Scotland to become a Lord of Appeal in Ordinary, an office which he filled until 1932.

Nevinson, Henry Woodd (1856-1941), traveler, man of letters, and journalist. His talents as war correspondent were far greater than those of a mere reporter and made him a military historian of considerable stature. The record of his life in journalism and pursuit of lost causes is found in his trilogy of *Changes and Chances*.

Nicholas of Cusa (1401-1464), German theologian and philosopher. An active leader of the Conciliar movement, he subsequently accepted Papal authority. His many-sided genius and

a skeptical revulsion from scholasticism made him a forerunner of the renaissance and a prophet of the modern age.

Northcliffe, Lord. *See* Harmsworth, Alfred Charles Williams.

Norton, Charles Eliot (1827-1908), editor, author, and professor of the humanities at Harvard. Nicknamed, somewhat irreverently, "Goose" Norton by Carlyle, he was a man of broad if somewhat arrogant cultivation, of free-thinking inclinations in religion and liberal tendencies in politics. His intimacy with the great figures on both sides of the Atlantic added a telling flavor to his teaching.

Parke, Sir James (1782-1868), Baron Wensleydale; judge of the Court of Exchequer from 1834 until 1855. His peculiar competence in the intricacies of common-law pleading seemed to have become a superfluous talent when the reforms of 1854 and 1855 were adopted, and he resigned from the Bench, leaving behind a reputation for that brand of legal intelligence which, no longer being a necessity, had been elevated to the dignity of a tradition.

Parker, Robert John (1857-1918), Baron Parker; judge of the Chancery Division from 1906 until 1913, Lord of Appeal from 1913 to 1918, and one of the greatest judges of his time. The distinctive qualities of his mind were straightforward clarity and unostentatious simplicity.

Parsons, Robert (1546-1610). In 1580 he became a Jesuit missionary to England and as such was busily engaged in polemic writing. His political thesis, not unrelated to his ecclesiastical mission, included the principle that the unrighteous monarch may not claim the loyalty or

obedience of his subjects. Parsons, with some success, undertook the formidable task of revealing the errors of Sir Edward Coke's endeavor to find legal justification for the Reformation.

Pasquier, Étienne (1529-1615), lawyer and jurist. Stirred by the lectures of Hotman, he came to see that monarchs must serve their people. His principal political writings were *Recherches de la France* (1560), *Catéchisme des jésuites* (1593), and *Pour parler du prince* (1594). *The Lettres de Pasquier* (1586) possess great literary charm and considerable historical interest.

Pattison, Mark (1813-1884), unhappy Oxford scholar of extensive learning whose misery flourished in the meddlesome mediocrity of University politics and who saw in the scholarship of Scaliger and Casaubon an inspiring but no longer attainable ideal. The self-deprecatory gloom and the search for a sustaining ideal suggest a similarity, perhaps superficial, to the qualities of Henry Adams. The tragic injustices which Pattison did himself are recorded in his *Memoirs* (1885). His greatest work, his *Life of Casaubon* (1875), has been described as "one of the gems of English literature."

Pitney, Mahlon (1858-1924), Associate Justice of the Supreme Court of the United States, 1912-1922, appointed by Taft. The Presidential expectations that Pitney would prove himself on the Federal bench the conservative which his practice, political career, and chancellorship in New Jersey had indicated him to be were not disappointed.

Planck, Max (1858-1947), German physicist and father of the quantum theory. In 1918 he was awarded the Nobel Prize in Physics.

Poincaré, Henri (1854-1912), physicist and mathematician. He was cousin of the statesman Raymond Poincaré and is best known to the non-specialists for his popular work, *The Foundations of Science* (Halsted, tr., 1913).

Power, Eileen (1889-1940), distinguished teacher, medievalist, and economic historian. From 1921 until her death she taught economic history at the London School of Economics. Among her most important writings are *Medieval English Nunneries* (1922) and *The Wool Trade in English Medieval History* (1941).

Primrose, Archibald Philip (1847-1927), fifth Earl of Rosebery; statesman who was Gladstone's Foreign Secretary and briefly succeeded his chief as Prime Minister in 1894. Thereafter he became the leader of the imperialist wing of the Liberal Party, but when the policies of that wing were overridden and Campbell-Bannerman became Prime Minister in 1905 he retired from politics. Thereafter he gave his energies to public addresses and to the pursuits of a cultivated leisure.

Proudhon, Pierre Joseph (1809-1865), French socialist who stirred Marx with his declaration that "property is theft" and antagonized him by repudiating the dictatorship of the proletariat. His conviction that federalism would be the greatest instrument for achieving justice was the reflection of his dislike of strong state authority. His theories became an important element in the dogma of the syndicalists of a later generation.

Prynne, William (1600-1669), beligerent Puritan and champion of Parliament whose scattered and explosive learning made *The Sovereign Power of Parliaments and Kingdoms* (1643) a frightening weapon in the

war against the supporters of the King and the friends of the Papacy. In nonpolitical matters he indulged his Puritanism in fanatic condemnation of the stage—as in his tract *The Unloveliness of Lovelocks* (1628) and his *Histriomastix* (1633).

Pufendorf, Samuel (1632-1694). In his efforts to formulate a theory of the law of nature he so skillfully mixed the divergent views of Grotius and Hobbes that a view of his own was the result. He pictured the world with which the law is concerned as peopled with moral beings acting not only in response to the instinct of self-preservation but by reason of sociability, and emphasized the rights of the individual against the state. The source of international law he discovered neither in treaties nor in custom, but in a law of nature more rational than divine.

Radbruch, Gustav (1878-1949), Professor of Law in many German universities. He also served as Minister of Justice in the Weimar Republic. His legal philosophy emphasized the relativity of values with which the law is concerned and the importance of certainty in any legal system. His most important work, *Rechtsphilosophie* (3rd ed., 1932), is published in translation in *The Legal Philosophies of Lask, Radbruch, and Dabin* (Wilk, tr., 1950).

Rayleigh, Baron. *See* Strutt, John William.

Redlich, Josef (1869-1936), Professor of Public Law at the University of Vienna, statesman, and learned student of the English government. His greatest contributions to scholarship were *The Procedure of the House of Commons* (1908) and *Local Government in England* (Hirst, tr., 1907). In 1925 he came to the Harvard Law

School as Professor of Comparative Public Law. His qualities as teacher and scholar are described by Felix Frankfurter and Charles C. Burlingham in 50 *Harv. L. Rev.* 389, 392 (January 1937).

Rice, Richard A. (1846-1924), Professor of Art at Williams College until 1911. He then moved to Washington and in 1912 became Chief of the Division of Prints in the Library of Congress.

Rivers, William Halse Rivers (1864-1922), experimental psychologist and ethnologist long associated with Cambridge University. In ethnology his most important work was a *History of Melanesian Society* (1914) and in psychology, *Instinct and the Unconscious* (1920) and *Social Organization* (1924). Arnold Bennett wrote with feeling of him in "W. H. R. Rivers: Some Recollections," 19 *New Statesman* 290 (June 17, 1922).

Robertson, George Croom (1842-1892), philosopher who held the chair of mental philosophy and logic at University College, London, from 1866 until 1892, and who was the first editor of *Mind*. His philosophical sympathies were with his friend Bain and the utilitarians. His extensive research in the Hobbes manuscripts resulted in his monograph, *Hobbes* (1886), and an article in the *Encyclopaedia Britannica*.

Robertson, John Mackinnon (1856-1933), radical freethinker, politician, and academically unaccredited scholar of the humanities. His "militant unorthodoxy" was expressed in many journals but was shown to be buttressed by extensive learning in his *History of Free Thought* (2 vols., 1936), and *A Short History of Christianity* (1902). Laski contributed a short biographical sketch of Robertson to *The Dictionary of National*

Biography, 1931-1940 (Legg, ed., 1949) 736.

Root, Elihu (1845-1937), lawyer and statesman. He was Secretary of War and Secretary of State under Theodore Roosevelt and Republican Senator from New York from 1909 to 1915. In his later years his great preoccupation was with problems of world peace.

Rosebery, Lord. See Primrose, Archibald Philip.

Royer-Collard, Pierre Paul (1763-1845), statesman and philosopher whose liberalism led him to assert that to acknowledge sovereignty was to admit despotism, and whose conservatism led him to support the cause of constitutional monarchy. The fruit of revolution he believed to be an absolute sovereignty of the people, and his effort was to support a monarchy founded in constitutional tradition which, being so founded, could never be absolute and never wholly despotic. His concern with basic liberties of the press and of religion, with the independence of the judiciary, and with parliamentary government was passionate and intense. Chapter IV of Laski's *Authority in the Modern State* (1919) deals with Royer-Collard.

Rutherford, Ernest (1871-1937), Baron Rutherford. Born and educated in New Zealand he became one of the great physicists of his times. His academic career was at McGill, Manchester, and Cambridge. His great discoveries in physics concerned radioactivity and the structure of atoms.

Saint-Évremond, Charles de Marguetel de Saint-Denis (1610-1703), soldier and skeptical man of letters whose witticisms and doubts sent him, an exile, to England.

St. John, Henry (1678-1751), Viscount Bolingbroke; organizer, leader, and theorist of the Tory Party. His philosophical inclinations and associations affiliated him with rationalism. Not an original thinker, he none the less had considerable influence on the political theory of his times and in his *Idea of a Patriot King* (1738) produced a pattern for the conduct of monarchs to which George III sought to conform.

Saint-Pierre, Abbé Charles Irénée Castel de (1658-1743), political moralist and enemy of intolerance. The complex structure of the utopia which he proposed in his *Discours sur la polysynodie* (1718) was not designed to give the political power to the people or despotic power to kings, but a balanced government controlled by an academy of experts. His internationalism inspired his *Projet pour rendre la paix perpetuelle en Europe* (3 vols., 1713-17).

Saint-Simon, Louis de Rouvroy, Duc de (1675-1755), political theorist and diarist. The enemy of centralized absolutism, he believed that political power should be vested in the second estate. It is more as historian than as theorist, however, that he is remembered, for in his *Mémoires* he presented an incisive if somewhat inaccurate and embittered picture of his times.

Saleilles, Raymond (1855-1912), Professor in the Faculties of Law at Dijon and Paris. His principal labors were in the field of comparative law, but his notable contribution to criminal law, *The Individualization of Punishment* (Jastrow, tr., 1911), was an important addition to the literature of penology. Philosophically, Saleilles was allied with those like Gierke, Demogue, and Hauriou who believed in the reality of collective personality and saw in the theory that the per-

sonality of groups is a fiction of the law, danger that private rights would be swallowed by public authority. He was quick to acknowledge, however, that the institutions of private law must find their justification in public policy. These problems he dealt with in his most famous work, *De la personnalité juridique, histoire et théories* (1910).

Salmond, Sir John William (1862-1924), Professor of Law and Justice of the Supreme Court of New Zealand. His *Jurisprudence* (1902) and his treatise on *The Law of Torts* (1907) became standard textbooks of the English law.

Samuel, Herbert Louis (1870-), first Viscount Samuel; Liberal statesman who has held innumerable high offices, none more important, perhaps, than that of High Commissioner in Palestine from 1920 to 1925. The story of his public life is told in his *Memoirs* (1945).

Sanford, Edward Terry (1865-1930). Advanced by President Harding to the Supreme Court of the United States from the Federal District Court in Tennessee, Sanford was a colorless colleague of Holmes's from 1923 to 1930. His tranquil inclinations were conservative, yet he joined with Holmes and Brandeis in a number of their important opinions on free speech.

Sankey, John (1866-1948), first Viscount Sankey; successively Judge of the King's Bench and of the Court of Appeal between 1914 and 1929; and Lord Chancellor from 1929 to 1935. At the bar he had been a master in the field of workmen's compensation and by his distinguished service as Chairman the Coal Mining Commission of 1919 had shown the capacity to make an acute intelligence the instrument of progress. It was no sur-

prise, therefore, when he became Chancellor in the Labour Government of 1929.

Sassoon, Sir Philip (1888-1939), politician, and art connoisseur whose graceful mind and personality made him an important link between the world of affairs and the world of art.

Scaliger, Joseph Justus (1540-1609), French classicist of monumental learning who laid the foundations of modern historical criticism. His greatest achievement was to upset the prevailing falsities of ancient chronology and to reveal the significance of antiquity before Greece. One of the tragedies of modern scholarship was that Mark Pattison did not live to complete his projected biography of Scaliger.

Scherer, Wilhelm (1841-1886), German philologist and historian of literature. His greatest works in the two fields of his interest were *Zur Geschichte der deutschen Sprache* (1868) and *Geschichte der deutschen Literatur* (1883).

Scott, James Brown (1866-1943), Professor of Law at Illinois, Columbia, and Chicago, and authority on international law. He held many governmental posts in connection with foreign affairs, and from 1907 to 1924 was editor of the *American Journal of International Law*.

Scott, John (1751-1838), Lord Eldon; twice Lord Chancellor of England (1801-1806, 1807-1827). His name has become the symbol of judicial caution, conservatism, and indecision. In politics he was an energetic and effective defender of the *status quo* and opponent of Catholic emancipation and legal reform. His brother William, Lord Stowell, excelled him in all capacities — even in

Lord Eldon's considerable capacity to enjoy and to consume port wine.

Scott, Sir Leslie (1869-1950), Lord Justice of Appeal from 1935 to 1948. His life was devoted more to professional than to political affairs, but his professional services to the state were many. He and Lady Scott were intimate friends of Holmes.

Scrutton, Thomas Edward (1856-1934), Justice of the King's Bench, 1910-1916, and of the Court of Appeal, 1916 to 1934. His genius as practitioner and as judge was in the field of commercial law; an irascible, ill-mannered temperament was somewhat softened with the years and at no time was so dominant as to prevent his being a great lawyer and a great judge.

Selden, John (1584-1654), lawyer and historian. Like Coke, he put his immense learning to the service of constitutional government, but, unlike Coke did so with gracious discretion. His numerous contributions to legal history were of such substantial importance that Maitland, the greatest of legal historians, named the Selden Society in his honor.

Seydel, Max von (1846-1901), Professor of Public Law at Munich. The Calhoun of Germany, he argued for the rights of the German states and, with Germanic logic, insisted that no intermediate between a unitary state and an alliance of sovereign states was juristically possible. His doctrine of federalism as applied to Germany and his denial to the Reich of that all-sufficient power known, somewhat redundantly, as *Kompetenz-Kompetenz*, was fully developed in his *Kommentar zur Verfassungsurkunde für das Deutsche Reich* (1873)

Shaw, Thomas (1850-1937), Baron Shaw of Dunfermline, later First

Baron Craigmyle. Ambition played a greater part than genius in securing his appointment as Lord of Appeal in Ordinary in 1909. His most famous opinion was his dissent in *Rex v. Halliday* in which he condemned as illegal the regulation permitting internment during the First World War. He told the story of his life in two books: *Letters to Isabel* (1921) and *The Other Bundle* (1927).

Sidgwick, Henry (1838–1900), gentle Cambridge philosopher who antagonized the agnostics by clinging to the possibility of faith and distressed the orthodox by indicating doubt. His principal philosophical work was *Methods of Ethics* (1874).

Siegfried, André (1875–), French economist and publicist who has written with frequency and discernment of other countries than his own.

Simon, Sir John (1873–), first Viscount Simon; conservative Liberal, who has held many high offices of state and served as Lord Chancellor from 1940 to 1945. His legal capacities have been acknowledged by all; his political judgment was mistrusted by those who thought appeasement of Hitler a mistake and doubted whether the rearmament of Germany would make for peace.

Sismondi, Simonde de (1773–1842), Swiss historian and economist. As a historian of literature he emphasized the institutional forces which mold the forms and affect the content of a nation's literature. In his economic writing he attacked the presuppositions of the classical economists and saw periodic crises as inevitable in a capitalist society. Though not himself a radical, his *Nouveaux principes d'économie politiques* (2 vols., 1819) became a classic text in the library of socialism.

Slessor, Sir Henry (1883–), Lord Justice of Appeal, 1929–1940. At the bar his principal interest was in the law of trade unions and he was the coauthor of an important treatise on the subject — Slessor and Baker, *The Law of Trade Unions* (1921). He has written of his life in the law in *Judgment Reserved* (1942).

Smuts, Jan Christiaan (1870–1951), South African soldier, statesman, and philosopher. His youth was spent in the military service of the Boers, his maturity in the service both of Great Britain and of his own people, with the public's gratitude for these latter services more prevalent abroad than at home. Following the First World War he put his hopes in the League of Nations. His lifelong interest in philosophy produced one piece of work of some importance — *Holism and Evolution* (1926).

Snowden, Philip (1864–1937), Viscount Snowden; Chancellor of the Exchequer in each of the MacDonald governments. His socialism, which came to him more from study than from experience, being of a different brand than that of the trade unionists, did not always fit with theirs, and made it comparatively easy for him to remain with MacDonald's National Government in 1931, when the Trade Unions refused to do so.

Sohm, Rudolf (1841–1917), German jurist and legal historian. The central thesis of his historical work was that the Frankish law had played a part in the development of the law of Europe scarcely less important than that played by Roman law. Holmes, in *The Common Law* (1882) and in his earlier writing, made considerable use of Sohm's writings.

Sorel, Georges (1847–1922), most famous for his *Reflections on Violence* (1908) and for his espousal of syn-

dicalism. His lifelong search was for an ethical principle which would guarantee the development of morality. The search led him down many divergent paths. He accepted the leadership of Proudhon and of Marx, identified democracy with mediocrity, and ultimately hailed, in succession, Fascism and Bolshevism as preferable to socialism.

Soto, Domingo de (1494–1560), Spanish jurist, who sought, in his most important work, *De justicia et jure* (2 vols., 1553–54), to translate Thomistic ethics into principles of the legal order.

Stammler, Rudolf (1856–1938), whose neo-Kantian philosophy of law emphasized the collective interests in a community of free-willing men and accepted as absolute “the principles of just law.” If, as Geny charged, he failed to inform us what law is “just” and showed a greater skill in juggling abstractions than in establishing criteria of judgment, he did, despite the sterility of his basic effort, succeed in reminding judges of their creative responsibilities in guiding the judicial process. He also persuasively supported the thesis that the content of the law of nature is variable and changing. His most important works were *Lehre von dem richtigen Recht* (1902), (published in an English translation under the title *The Theory of Justice*, Husik, tr., 1925), *Wirtschaft und Recht* (1896), and *Lehrbuch der Rechtsphilosophie* (1922).

Stephen, Sir James Fitzjames (1829–1894). Lawyer, judge, and publicist, he was the forceful brother of Sir Leslie Stephen. In affairs his greatest achievement was as successor to Sir Henry Maine as legal member of the Council in India. That experience converted him to the cause of codification and nourished the doubt whether the optimism of Mill, in so

far as it affected political principles, was acceptable. The result was the publication of his *Liberty, Equality, Fraternity* (1873). That work, together with his *History of the Criminal Law* (3 vols., 1883), reveal more fully than any other of his writings the vigor of his mind and the breadth of his scholarship.

Story, Joseph (1779–1845), Associate Justice of the Supreme Court of the United States from 1811 to 1845. Appointed to the Court by Madison he became as ardent a defender of national power as his Chief, John Marshall. His extraordinary energies were such that while serving on the Court he was also a member of the law faculty at Harvard and the author of ten large treatises on various subjects in the law. The utility of these volumes as reasoned, if somewhat uncritical compendia of cases and principles, was enormous and they had an influence equal to if not greater than Story's judicial opinions.

Strutt, John William (1842–1919), third Baron Rayleigh; physicist and mathematician who held the Cavendish professorship of physics at Cambridge from 1879 to 1884. His genius was not that of discovery but of elucidation.

Stubbs, William (1825–1901), historian and churchman who resigned the Regius Professorship of Modern History at Oxford to become Bishop of Chester and, later, Bishop of Oxford. Learned editor of many volumes in the Rolls series, his greatest piece of historical writing was his *Constitutional History of England in Its Origin and Development* (4 vols., 1874–78). With extraordinary care he kept the clerical and conservative principles which dominated him as a man from affecting his judgment as historian. He so skillfully used the methods of German scholarship that his

English successors found them a part of the English tradition of historiography.

Suárez, Francisco (1548-1617). In answering such Protestant theorists of the Reformation as Althusius, he re-vivified the Thomistic version of the law of nature and made the last great contributions to scholastic philosophy. His political theory reemphasized the medieval doctrine of popular sovereignty as a limitation on the power of kings.

Sumner, Charles (1811-1874), Abolitionist Senator from Massachusetts. A man of considerable capacity, extensive cultivation, and impeccable New England connections, he allowed his one passion — emancipation — to dominate his political destiny and by the arrogance of his righteousness antagonized those whom he might by other means have persuaded. The most dramatic incident of his political career occurred in 1856 when he was attacked and seriously injured by a hotheaded Congressman from South Carolina, whose relative, Senator Butler, had been vigorously insulted by Sumner in an address on the Senate floor two days before.

Sumner, Lord. *See* Hamilton, John Andrew.

Taine, Hippolyte (1828-1893), critic and historian whose misanthropic positivism led him to see man as a "dismal gorilla" and whose respect for the fruitfulness of inequality led him to condemn the objectives and the achievements of the French Revolution. In his chief historical work, *Les origines de la France contemporaine* (6 vols., 1876-94), he was immersed in the tragedies of a modern France which had not enjoyed the buoyant successes of Victorian England, and

became, in the words of Professor Gooch, "a pessimist in a passion." The greatest influence of Taine as historian was on the conservatives who, abandoning his positivism, shared his regret that the Revolution had occurred.

Taney, Roger Brooke (1774-1864), Chief Justice of the United States from 1836 to 1864. Coming to the Supreme Court as Marshall's successor, he showed himself to be a judge of extraordinary competence well qualified for the succession. The perspective of time has made his one great error — his opinion in the Dred Scott case — seem less significant than it did to earlier generations, which saw it as a primary cause of the Civil War.

Tarde, Gabriel (1843-1904), French social psychologist. In his best known work, *Les lois de l'imitation* (1890), he sought to uncover the laws of repetition, by which he conceived that most actions of most men are determined. In all his work he was more concerned with concrete instances than with large abstractions.

Tawney, R. H. (1880-), economic historian and publicist, long associated with London University and frequently called to the public service. Of his many works the best known, perhaps, are *Religion and the Rise of Capitalism* (1926) and *The Acquisitive Society* (1920).

Thayer, James Bradley (1831-1902), Professor of Law at the Harvard Law School from 1874 until his death. Thayer's great contributions to legal history and to the law of evidence are preserved in his *Preliminary Treatise on the Law of Evidence at Common Law* (1898). His short essay, "The Origin and Scope of the American Doctrine of Constitutional Law,"

7 *Harv. L. Rev.* 129 (1893), was a work of profound wisdom having since its publication a large influence on constitutional theory and, from time to time, a salutary effect on judicial decisions.

Thibaudet, Albert (1874-1936), literary critic, and teacher whose perception was always telling and never simply academic. Of his many studies of particular authors none excels his *Flaubert* (1922).

Toller, Ernst (1893-1939), German playwright. Imprisoned for five years for participation in the Bavarian revolution of 1919, he wrote a number of his most important plays of protest while imprisoned. Of the plays translated into English the best known were *Man and the Masses* (1924), *The Machine-Wreckers* (1923), and *Pastor Hall* (1939). He left Germany in 1932 and committed suicide in New York in 1936.

Trevelyan, Sir George Otto (1838-1928), historian and statesman. His most famous work was his biography of his uncle, *The Life and Letters of Lord Macaulay* (1876). His son, George Macaulay Trevelyan, was Regius Professor of Modern History at Cambridge.

Turner, Frederick Jackson (1861-1932), American historian. In 1893, while teaching at Wisconsin, he published a short paper, "The Significance of the Frontier in American History," which opened new vistas of history. The hypothesis there suggested, that the American character was molded more by frontier conditions than by inherited traditions, has profoundly affected American historiography. Turner's later life, which took him to Harvard between 1910 and 1924, was largely given to the exploration of his own hypothesis.

Unamuno, Miguel de (1864-1937), author, philosopher, and Professor of Greek and Rector of the University of Salamanca. His philosophy (or his religion) made man's supreme capacity his faith. The liberalism implicit in that conviction made him an exile from Spain during the dictatorship of Rivera and brought him back to disappointment during the Republic. His first hope during the days of the rebellion, that Franco would bring his country salvation, was, by the time of his death, somewhat shaken. His best-known works, outside Spain, were *The Tragic Sense of Life in Men and in Peoples* (Fitch, tr., 1928) and *The Life of Don Quixote and Sancho* (Earle, tr., 1927).

Vattel, Emmerich de (1714-1767), Swiss jurist. His great work on international law, *Le droit des gens* (2 vols., 1758), found the basis of international law in principles of utility which were the postulates of reason. He sought to find legal doctrine which would make war unlawful, but was compelled to acknowledge its legality when it was waged for the enforcement of customary duties and treaty obligations.

Vauvenargues, Marquis de (1715-1747), soldier, moralist, and epigrammatist. It was largely owing to the friendship of Voltaire that the Marquis, becoming an invalid, turned to letters as his occupation. The most important result was his *Introduction à la connaissance de l'esprit humain* (1746) with its accompanying maxims.

Victoria, Franciscus de (1480-1546), Dominican theologian and Professor at Salamanca. In his *Relationes de potestate civile* (1565) he developed the thesis that the king is subject to the law. In his writing on the law of nature and the law of nations he em-

phasized, with Grotius and Suárez, the creative role of reason.

Vinogradoff, Sir Paul (1854–1925), legal historian of Russian birth who became Professor of Jurisprudence at Oxford in 1903, succeeding Sir Frederick Pollock. His greatest discovery was the manuscript of Bracton's *Notebook* and his most important piece of historical writing was *Villainage in England* (1892). His Oxford seminar produced the Oxford *Studies in Social and Legal History* (9 vols., 1908–27), under his editorship.

Viollet, Paul (1840–1914), legal historian whose major work was his *Droit public: Histoire des institutions politiques et administratives de la France* (3 vols., 1889–1903).

Wallas, Graham (1858–1932). In his early years Wallas was intimately associated with Shaw and Webb in the Fabian Society. Later he became one of the organizers of and early lecturers at the London School of Economics and Political Science, filling its first chair of political science from 1914 to 1923. His earliest book, *The Life of Francis Place* (1898), was an important addition to knowledge of the history of the British labor movement. In his later works he endeavored to build a science of social psychology in the hope that political theory might be freed from the grip of intellectualism. *The Great Society* (1914) was a book of enormous influence in revealing the relationships between psychology and political science and in suggesting how fruitful the scientific temper might be when applied to the problems of political theory.

Ward, Lester Frank (1841–1913), American sociologist whose most important work, *Dynamic Sociology* (2 vols., 1883), was written while he

was a civil servant in Washington engaged in scientific research and before his appointment as Professor of Sociology at Brown University. His sociological theory emphasized the capacity of man by conscious effort to improve the human lot and through that emphasis served effectively to refute the evolutionary determinism of Spencer. From an early date Holmes was an admirer of Ward's writing.

Watson, William (1827–1899), Baron Watson; Scottish lawyer who became Lord of Appeal in Ordinary in 1880 and left the imprint of his massive intelligence on all the important cases to come before the House of Lords before his death. "In later life he was reputed the profoundest lawyer in the three kingdoms."

Webster, Richard Everard (1842–1915), Viscount Alverstone. The forceful manner and bearing which brought him enormous successes at the bar were not the traits which make great judges. Lacking other distinguishing qualities he made no significant contributions to the law while serving briefly as Master of the Rolls and from 1900 to 1913 as Lord Chief Justice of England. His most famous action as judge was his concurrence with the American members of the Alaska Boundary Tribunal in 1903.

Westbury, Lord. *See* Bethell, Richard.

Wigmore, John Henry (1863–1943), learned Dean of the Law School of Northwestern University. His monumental treatise on *The Law of Evidence* (3rd ed., 10 vols., 1940) is one of the great classics of Anglo-American law. His close friendship with Holmes survived the strain to which it was subjected by Wigmore's petulant postwar patriotism which found Holmes's tolerant views on free speech intolerable.

Wilberforce, Samuel (1805-1873), successively Bishop of Oxford and Winchester. The nickname "Soapy Sam" was justified in the public's mind by his aptitude for evasion. The fear of many that he would follow Newman into the Church of Rome proved mistaken and at the end of his life he was recognized as one of the strongest churchmen of his times.

Williston, Samuel (1861-), Professor of Law at Harvard from 1890 until his retirement in 1938. Williston's greatest written work was his *Law of Contracts* (1st ed., 1920) but his supreme achievement was as a masterful teacher in whose hands the case method of instruction became a fine art.

Winfield, Sir Percy (1878-), legal historian and scholar, who for many years was Rouse Ball Professor of English Law at Cambridge.

Wister, Owen (1860-1938), lawyer, novelist, grandson of Fanny Kemble, and, above all, Philadelphian. A vigorous admirer of Theodore Roosevelt's vigor, he was best known, perhaps, for his novel *The Virginian* (1902). His friendship with Holmes began when Holmes was on the Massachusetts bench and Wister was a law student at Harvard.

Wolff, Christian von (1679-1754), philosopher, mathematician, and disciple of Leibniz. His rationalism was that of the Enlightenment, and though he made no large creative contributions to the philosophy of his time and place his influence as expositor was considerable. His political theory was grounded on the assumption that in his state of nature man was not at war with his neighbor but enjoyed a freedom regulated by natural law. In modern society, however, he conceived that the will of the ruler might properly be supreme.

Wright, Chauncey (1830-1875), American mathematician and philosopher, friend of Holmes and of William James. Wright's influence on his Cambridge contemporaries was evidently considerable and justifies the statement that he was "the precursor of the empiricistic and pluralistic varieties of pragmatism." To Henry James he was one of "the great intending and unproducing (in anything like the right degree) bachelors of philosophy, bachelors of attitude and of life." See Wiener, *Evolution and the Founders of Pragmatism* (1949), 207-212.

Wu, John C. H. (1899-), jurist, judge, and intimate friend of Holmes. The original story of their intimacy is revealed in the letters of Holmes to Wu, first published in the *T'ien Hsia Monthly* for October 1935, later reprinted in Shriver, *Justice Oliver Wendell Holmes, His Book Notices and Uncollected Letters and Papers* (1936), 151 *et seq.* Dr. Wu has written of his own life, of his friendship with Holmes, and of his conversion to Roman Catholicism in *Beyond East and West* (1951).

Young, Allyn Abbott (1876-1929), American economist, whose last academic post in the United States was at Harvard, from 1920 to 1927, when he became professor of Political Economy at the University of London. Author of *Economic Problems, Old and New* (1927).

Zimmern, Sir Alfred (1879-), historian, classicist, and student of foreign affairs. He has held many academic posts in Great Britain and the United States, and has written of and participated in such international enterprises as the League of Nations and UNESCO. His most important piece of scholarship is *The Greek Commonwealth* (1911).

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July 1920-1923: (L) 271, 273, 278, 303, 314; vacation at Bourne-mouth, (L) 355, 358; lectureship at Cambridge University, (L) 393, 437, 460, 488, 507, 514, 552-53; work for International Commission on Private Settlements, (L) 427; vacation in Belgium, 1922, (L) 440-41; visit to Holland, 1922, (L) 442; appointed head of the Department of Political Science, London School of Economics, (L) 479, 507; blood transfusion, (L) 486, (H) 491, visit to Paris (April 1923), (L) 497; writes MacDonald's speech on Irish deportations, 1923, (L) 501-502; acquisition of car, (L) 514, 545, 546, 554; 12th anniversary of marriage, (L) 520, (H) 524; vacation in Belgium (1923), (L) 524

1924-1927: offered tutorship, New College, Oxford, (L) 623; experience at Newcastle, 1925, (L) 728; visits France (April 1925), (L) 731-32; becomes Director of Research, London School, (L) 791; to secure University chair of Political Science, (L) 794, 828-29; American trip (1926), (L) 811, 822, (H) 823, (L) 828, 835-36; visit to Holland (January 1926), (L) 818; visit to Scotland (January 1926), (L) 820-21; plans course in Administrative Law, (L)

846; vacation on Continent (August 1926), (L) 863-64; bookbuying in Paris (August 1926), (L) 867; visits Geneva (August 1926), (L) 869-70; visit to Antwerp (August 1926), (L) 873; forced to leave Warwick Gardens, (L) 876; service on Industrial Court, (L) 881-82; acquisition of Devon Lodge, (L) 882-83, 891, 894, 907, 908, 911; visit to Paris (March 1927), (L) 931; automobile accident, (L) 944; vacation in France (August 1927), (L) 966-67, 968-69; visit to Switzerland (August 1927), (L) 972-73; visit to Paris (August 1927), (L) 977; mistaken arrest in Manchester, (L) 979; offered post at Oriel, (L) 987; miraculous purchase of 17th-century desk, (L) 990, (H) 991

1928-1929: vacation in Belgium (1928), (L) 1013; lecture to secular society (January 1928), (L) 1021; appointed to Education Committee, London County Council, (L) 1037; visit to Paris (April 1928), (L) 1047; invited to lecture at Geneva, (L) 1058; meeting with schoolmaster friend, (L) 1072-73; Belgian vacation (1928), (L) 1078-79, 1082; Baldwin offers him secretaryship to Cabinet research committee, (L) 1104, (H) 1105; attack of pneumonia, following two bouts of influenza, (L) 1128-29; visit to Paris (January 1929), (L) 1129; visit to Geneva (March 1929), (L) 1138-39; invited to lecture at Yale, (L) 1140; campaigning and organizing Labour government, 1929, (L) 1150, 1153-54; urged by MacDonald to go to Lords, (L) 1153; preparation of Yale lectures, (L) 1155, 1165, 1171; gives aid to the Lord Chancellor, (L) 1160-61; his role in Labour government, 1929, (L) 1170; gypsy tells his fortune, (L) 1176-77; elected member of Rationalist Press Association, (L) 1190; named to Committee on Ministers' Powers, (L) 1194, 1199-

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1930-1934: vacation in Belgium and Holland (January 1930), (L) 1217-18; invited to Yale lectureship in 1931, (L) 1225; visit to Paris (March 1930), (L) 1236-37; his Deanship of London faculty, (L) 1261; vacation in Germany (August 1930), (L) 1273-74, 1275-76, 1278-79; visit to Paris (December 1930), (L) 1300-1301; visit to Belgium and Holland (January 1931), (L) 1302; visit to United States, 1931, (L) 1308-20; service on Departmental Committee on Local Government, (L) 1321, 1464; visit to France (July 1931), (L) 1321, 1323, 1325-26; becomes Chairman of Faculty, (L) 1368; visits to Paris (April 1932), (L) 1376; his conversation with the King, (L) 1418-19; visit to Paris (December 1932), (L) 1421-22; invited to Storrs lectureship at Yale, (L) 1421; visit to Belgium (January 1933), (L) 1427-28; lectureship at Madrid, (L) 1435, 1445, 1446-47; visit to United States (1933), (L) 1436; participates in Cecil conversations with Russians (January 1934), (L) 1467

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676, 678, 681, 695, 722, 732, 755-56, (H) 761, 761-63, 768-69, (L) 775, 776, (H) 783, (L) 784-85, (H) 786, (L) 794, (H) 1055, (L) 1195, 1212; *Liberty in the Modern State*, (L) 1171, 1174-75, 1178-79, 1185, 1241, 1244, (H) 1249-50; *Political Thought in England from Locke to Bentham*, (L) 172, 233, (H) 254, (L) 258, (H) 277, 281, (L) 282, 295, 433; *Selected Letters of Edmund Burke* (1922), (L) 317, 320-21, 330, 346, 353, 366, 393, 434-35; *The Socialist Tradition in the French Revolution*, (H) 1246; *The State in Theory and Practice*, (L) 1469, 1481; *Studies in Law and Politics* (1932), (H) 1367, (L) 1372. See also *Vindiciae contra tyrannos*

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